

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026 (REG)

4 Adv. Case No. 12-09802 (REG)

5 - - - - - x

6 In the Matter of:

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8 GENERAL MOTORS CORPORATION,

9

10 Debtor.

11 - - - - - x

12 MOTORS LIQUIDATION COMPANY GUC TRUST,

13 Plaintiff,

14 v.

15 APPALOOSA INVESTMENT LIMITED,

16 Defendant.

17 - - - - - x

18 U.S. Bankruptcy Court

19 One Bowling Green

20 New York, New York

21

22 July 26, 2012

23 9:46 AM

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1 B E F O R E :

2 HON ROBERT E. GERBER

3 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Debtors' 115th Omnibus Objection to Claims
2 (Welfare Benefits Claims of Retired and Former Salaried and
3 Executive Employees)

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5 Hearing re: Debtors' 170th Omnibus Objection to Claims
6 (Welfare Benefits Claims of Retired and Former Salaried and
7 Executive Employees)

8

9 Hearing re: Debtors' 175th Omnibus Objection to Claims
10 (Welfare Benefits Claims of Retired and Former Salaried and
11 Executive Employees)

12

13 Hearing re: Debtors' 180th Omnibus Objection to Claims
14 (Welfare Benefits Claims of Retired and Former Salaried and
15 Executive Employees)

16

17 Hearing re: Debtors' 181st Omnibus Objection to Claims
18 (Welfare Benefits Claims of Retired and Former Salaried and
19 Executive Employees)

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21 Hearing re: Debtors' 182nd Omnibus Objection to Claims
22 (Welfare Benefits Claims of Retired and Former Salaried and
23 Executive Employees)

24

25 Hearing re: Debtors' 183rd Omnibus Objection to Claims

1 (Welfare Benefits Claims of Retired and Former Salaried and
2 Executive Employees)

3

4 Hearing re: Debtors' 184th Omnibus Objection to Claims

5 (Welfare Benefits Claims of Retired and Former Salaried and
6 Executive Employees)

7

8 Hearing re: Debtors' 185th Omnibus Objection to Claims

9 (Welfare Benefits Claims of Retired and Former Salaried and
10 Executive Employees)

11

12 Hearing re: 281st Omnibus Objection to Claims (Insufficient
13 Documentation)

14

15 Hearing re: Motion to Award of Attorneys Fees from Claim

16 No. 51093 Settlement Fund on behalf of Anderson Class

17 Counsel

18

19 Hearing re: Motors Liquidation Company GUC Trust's

20 Objection to Claim No. 11064 Filed by Cardenas Motors Inc.

21

22 Hearing re: Adv: 12-09802 - Motion of Aurelius Investment,
23 LLC for Summary

24

25 Transcribed by: Dawn South and Jacquelyn Goldsmith

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1 P R O C E E D I N G S

2 THE COURT: Good morning, have seats, please. All
3 right, good morning. We're here on Motors Liquidation,
4 formally known as General Motors, and I see Mr. Griffiths
5 and Ms. Greer here. Are you going to take the lead,
6 Mr. Griffiths?

7 MR. GRIFFITHS: Yes, Your Honor, thank you.

8 THE COURT: Why don't you go ahead then, thank
9 you.

10 MR. GRIFFITHS: David of Griffiths of Weil,
11 Gotshal & Manges for the Motors Liquidation Company GUC
12 Trust.

13 Your Honor, we have on the calendar this morning
14 ten omnibus objections to claims relating to former
15 employees of General Motors. These are claims that were
16 carried over from the June 14th hearing.

17 If Your Honor recalls, at the June 14th hearing we
18 were handling former employees of the debtors who had
19 retired between the 1960s and the 1980s, and Your Honor had
20 requested that the estate attempt to locate summary plan
21 descriptions from that period specifying that they had the
22 ability to amend or modify and terminate benefits.

23 Your Honor, we have done so. We placed on the
24 record, and I believe Your Honor has a folder in front of
25 you, the summary plan descriptions starting in 1963.

1 THE COURT: Yes, I do, Mr. Griffiths. I think you
2 have answered the question that I had asked you to follow up
3 on, subject to the employees rights to be heard.

4 In the past when we've had matters of this
5 character we've given the folks an opportunity to you speak
6 and then given you a chance to respond and we've had a back
7 and forth until we got it all out. Do you think that makes
8 sense again?

9 MR. GRIFFITHS: Yes, Your Honor, we're happy reply
10 on our existing submissions.

11 THE COURT: Okay. You could help me however by
12 naming the people who you understand to be presenting the
13 issues that I need to deal with today, and then I'm going to
14 invite each one of them to speak.

15 MR. GRIFFITHS: Thank you, Your Honor. You should
16 have in front of you a folder we prepared with each of the
17 replies in alphabetical order, and I just propose to go in
18 that order.

19 THE COURT: That's fine. With you now,
20 Mr. Griffiths, go ahead.

21 MR. GRIFFITHS: Thank you, Your Honor. And we
22 made available copies of the summary plan descriptions to
23 each of the claimants on the phone today by --

24 THE COURT: You've already made them available to
25 them so they know what you're talking about.

1 MR. GRIFFITHS: Yes, Your Honor, we sent them out
2 by FedEx on CDs.

3 So Your Honor, the first claimant would be Ms.
4 Jane C. Bogue, B-O-G-U-E.

5 THE COURT: Okay. Ms. Bogue, are you on the
6 phone?

7 MS. BOGUE: Yes, I am, Your Honor.

8 THE COURT: Would you like to be heard?

9 MS. BOGUE: Well, just what I would like to say is
10 that I did get the disk that he send out, and I also went
11 back and looked through all the records that I had kept over
12 the years, and starting in 1977 General Motors furnished us
13 with a little booklet that said personal benefit summary and
14 it was a lengthy summary of all your GM benefits, and on the
15 back of each one of those there was a little note and it
16 just said something about General Motors and whatnot. And
17 not until 1987 did the one come out with the note on the
18 back that says General Motors does not have access to your
19 -- any way it says that General Motors has the right to
20 change and amend these benefits, and that's the first one of
21 those summary booklets that that came out on was in 1987.

22 THE COURT: Uh-huh. Okay. Mr. Griffiths, can you
23 help us on that, do you want to respond?

24 MR. GRIFFITHS: Your Honor, we've reviewed -- I
25 mean we requested from GM copies of summary plan

1 descriptions relating to welfare benefit programs and life
2 insurance going as far back as they had them. Every single
3 copy of the welfare benefits summary plan descriptions we
4 received contained the reservation of rights language, and
5 the examples that we provided range from 1963 to 1982,
6 following which we believe the Sprag (ph) -- the ruling in
7 Sprag applies -- and -- or Sprague, and Sprague has referred
8 specifically to summary plan descriptions from 1984 onwards.
9 So the GUC Trust believes that it's covered the entire
10 period that relates to the employment of these -- of those
11 employees.

12 And while I'm happy to look at any documents that
13 Ms. Bogue has, the documents and summary plan descriptions
14 we've submitted, pursuant to the declaration of Joseph
15 Smolinsky, should be authoritative on the matter.

16 THE COURT: Did the package that you sent to
17 Ms. Bogue include the plan descriptions for the period
18 during which she was employed?

19 MR. GRIFFITHS: Yes, Your Honor. The -- I mean
20 I'd have to ask Ms. Bogue specifically when she started and
21 finished her employment, but assuming it was between 1963
22 and the present then she would be covered by what we've
23 already submitted.

24 THE COURT: Ms. Bogue, what were the dates of your
25 employment?

1 MS. BOGUE: 1954 to 1989.

2 THE COURT: 1964 to --

3 MS. BOGUE: No, 50, 50.

4 THE COURT: 5-4?

5 MS. BOGUE: Yes, sir.

6 THE COURT: Okay. Mr. Griffiths, it appears to me
7 that Ms. Bogue is a real long-time employee and that she may
8 have had nine years of service even before the 1963 date
9 that you referred to.

10 I am wondering whether in her case it would be
11 best to continue this matter one more time to try to either
12 get our arms around the facts or give you a chance to work
13 out a deal with Ms. Bogue.

14 MR. GRIFFITHS: That will be entirely appropriate,
15 Your Honor. We have received summary plan descriptions
16 going back to 1943, which --

17 THE COURT: 43?

18 MR. GRIFFITHS: Correct, Your Honor.

19 THE COURT: You mean like during the Second World
20 War, 1943?

21 MR. GRIFFITHS: Correct, Your Honor. The -- GM's
22 records are surprisingly good. I haven't -- I didn't
23 actually request the copy from 1943 because it had to be --
24 it had to come from GM's archives, but these are the ones
25 they could locate as quickly as they could.

1 THE COURT: Frankly, I would not have thought that
2 I would have needed you to get a search back as far as 1954,
3 but I think we need to do that to be as -- to be fair to
4 Ms. Bogue.

5 MR. GRIFFITHS: Absolutely, Your Honor. And just
6 to note that each of the summary plan descriptions by their
7 own terms supersede each other, so every time a resulting
8 summary plan description was issued it would then replace
9 the previous one.

10 THE COURT: Yeah, I understand that, but the legal
11 issue we've been trying to get our arms around is what
12 happens when an employee works part of his career or hers
13 when there is no such reservation of rights, and works the
14 rest when there is. An issue as to which as far as I'm
15 aware there's no reported case yet.

16 MR. GRIFFITHS: Other than Your Honor's ruling in
17 Chemtura, which I have read and I am aware of.

18 THE COURT: Well, my memory in Chemtura is that I
19 didn't expressly deal with that and I invited people to do
20 the same thing you're doing, which is to get more facts for
21 me or better yet settle it, and I -- and my memory is that
22 there was a lawyer in Connecticut, whose name I've now
23 forgotten, who had represented a bunch of employees who had
24 service both before and after Chemtura reserved the right,
25 and that the matter ultimately settled.

1 MR. GRIFFITHS: Yes, Your Honor, and I believe in
2 Chemtura there was a situation where one claimant had
3 certain benefits which were subject to reservation of rights
4 pursuant to the plan and other benefits that were not, and
5 these benefits that can be distinguished insofar as all of
6 the benefits were provided under one plan which, you know,
7 reserved the right to amend or modify in full.

8 But Your Honor, we'll absolutely continue the
9 matter with respect to Ms. Bogue given her employment.

10 THE COURT: Okay. It's obvious that your prep for
11 this hearing is better than my memory of Chemtura.

12 But with that said I think we agree on the game
13 plan. Ms. Bogue, are you with me in terms of what we're
14 doing?

15 MS. BOGUE: I can -- I don't hear real well, but I
16 think I understand. May I just say one thing about the disk
17 that Mr. Griffiths sent me?

18 THE COURT: Sure.

19 MS. BOGUE: I don't -- my computer won't even play
20 it, I had to get a neighbor to let me even look at that, and
21 what that was, was copies of hand out booklets that GM put
22 out. I don't even know that we at our local GMAC office
23 here in Longview received those booklets. That was not
24 anything that went to an individual, it was just handouts
25 that routinely General Motors got little handout booklets,

1 and I believe that's what those were that you sent copies of
2 on that disk. Is that not right?

3 THE COURT: Well, you got to put your comments to
4 me, Ms. Bogue.

5 MS. BOGUE: I'm sorry, okay.

6 THE COURT: But I'm perfectly happy to give
7 Mr. Griffiths a chance to answer that question. By the way
8 you said Longview, is that Longview, Texas?

9 MS. BOGUE: Yes, sir. Yes, sir.

10 THE COURT: All right.

11 MS. BOGUE: And it was GMAC and we were a small
12 office and we did routinely get little ole booklets that
13 they'd put out on a little book stand, you know, but they
14 were not given to individuals and not gone over with us in
15 any way. I don't even know that we ever saw half of the
16 booklets that were on that disk. I don't really know.

17 THE COURT: Okay. Well, it's also possible that
18 what Mr. Griffiths gave you covered more than just you.

19 In any event --

20 MS. BOGUE: Oh, yes, sir. Oh, yes, sir, these
21 were just little routine booklets that I guess went out to
22 every General Motors office or whatever.

23 THE COURT: Okay.

24 MS. BOGUE: It was nothing to me.

25 THE COURT: Well, here's what I would like to do.

1 MS. BOGUE: Okay.

2 THE COURT: Mr. Griffiths, the way that we can
3 deal with these issues in commercial cases doesn't always
4 translate perfectly when we have people, you know, who are
5 regular folks who don't have access to computers and all of
6 the technology and stuff like that.

7 So what I'd like you to do as a courtesy to me and
8 to Ms. Bogue is to send her paper copies of anything where
9 GM has reason to believe that she either got it or should
10 have gotten it or should have had access to it, and then
11 we'll sort it out later. And I would like you for these
12 folks, or at least anybody who asks for it, to give them to
13 them in paper form rather than in electronic form.

14 MR. GRIFFITHS: Yes, Your Honor, absolutely. And
15 to be clear, we had just as a -- to lower the cost of the
16 estate and the environment we had sent out the copies on CDs
17 and noted in a letter that hard copies could be requested
18 from us.

19 THE COURT: Well, I understand that, but having
20 reviewed the fee requests in this case I can guarantee you
21 that the cost of sending out paper copies to the folks who
22 don't have computers won't be a material incremental cost in
23 the management of this case.

24 MR. GRIFFITHS: Yes, Your Honor.

25 THE COURT: Okay. Who's our next employee?

1 MR. GRIFFITHS: Your Honor, the -- it would be
2 Mr. Gordon Hall, H-A-L-L.

3 THE COURT: Right. Mr. Hall, are you on the
4 phone? Mr. Hall?

5 COURTCALL OPEATOR: There is no appearance for
6 Mr. Hall, Your Honor.

7 THE COURT: Okay. Mr. Griffiths, with Mr. Hall
8 having not appeared on the phone I'm going to consider that
9 matter to have been resolved in the GUC Trust favor or GM's
10 favor.

11 MR. GRIFFITHS: Thank you, Your Honor.

12 THE COURT: So let's move on to the next one,
13 please.

14 MR. GRIFFITHS: It would be Mr. Stanley Jack,
15 J-A-C-K.

16 THE COURT: Okay. Mr. Jack, are you on the phone?

17 MR. JACK: Yes, I am, sir.

18 THE COURT: Where are you located, Mr. Jack?

19 MR. JACK: I'm located in the upper peninsula of
20 Michigan.

21 THE COURT: Okay. Would you like to be heard on
22 this matter further? I think we were together on the phone
23 some weeks ago.

24 MR. JACK: Yes, we were.

25 I guess, Your Honor, I just one comment.

1 THE COURT: Sure, go ahead, please.

2 MR. JACK: Okay, thank you.

3 I, you know, listened to the conversation this
4 morning, and yes, I did receive the DVD where it does say
5 the corporation, you know, can change the contract just
6 under part and have no consideration. It doesn't say no
7 consideration for the employee, but they don't come and ask
8 if you agree or sign another document saying that you agree
9 with the change.

10 But I guess the problem I really have with the
11 whole thing is I go back to my pension to where the
12 corporation, the size for the corporation has the ability to
13 give you a letter and basically force you out knowing I was
14 sitting there with 30 plus years -- 30 and a half years and
15 pressured to retire, and at that point take 50 percent of my
16 pension, and if I was able to work for another six years I'd
17 get 100 percent. That doesn't make sense. I mean that I
18 should lose 50 percent of what I worked for and I worked for
19 30 plus years and that's what happens.

20 And I'm not an attorney and I don't know what the
21 legal part of this is, but it is just very frustrating to
22 see that the corporation can just get away with doing that.
23 I mean, I know they're trying to save money, but they're
24 doing it on -- you know, for years my whole career they told
25 me the people of the corporation are their major asset.

1 Well guess what, as soon as I, you know, they get rid of me
2 it's like I'm the biggest liability they ever had, and it's
3 just so disheartening to think that our legal system just
4 allows this to happen to people, and it looks like it's just
5 going to continue with other companies as it goes on, and I
6 don't know when it stops.

7 But I wouldn't wish this on anybody to have to
8 work all these years and then have this happen to them.
9 It's just so disheartening and it's unbelievable what it
10 puts a family through. And I'm living in the UP of
11 Michigan, so it has something to do with having half of my
12 retirement and trying to make a decent life go on, my golden
13 years I guess for my wife and I.

14 But I just ask the Court to give it some
15 consideration, but I don't believe I have any legal grounds,
16 I'm not sure. But any ways that's all I have to say, sir.

17 THE COURT: Well, I well understand your concerns,
18 Mr. Jack. There isn't much I can do about the way
19 corporations treat their employees across the country
20 generally. I can focus on the issues in General Motors.

21 I heard you talk about your pension. Do you
22 understand that this motion doesn't affect your pension but
23 only affects your medical benefits and your life insurance?

24 MR. JACK: Well, I actually have two claims. In
25 the one claim I had -- was for my pension.

1 THE COURT: Okay.

2 MR. JACK: I mean, I had two claims -- I had two
3 -- I actually had two claims submitted.

4 THE COURT: Fair enough.

5 Mr. Griffiths, I may or may not have been right
6 when I asked Mr. Jack that question. Why don't you respond
7 generally if you would like to.

8 MR. GRIFFITHS: Your Honor, specifically with
9 respect to pensions obviously Your Honor is correct that the
10 omnibus objections in the hearing today don't relate to
11 pensions, pensions were assumed by New GM pursuant to the
12 agreement whereby New GM acquired all of Old GM's assets --
13 or good assets.

14 Your Honor, specifically with respect to
15 Mr. Jack's complaint, it appears that Mr. Jack's -- Mr. Jack
16 had the option to either take early retirement towards the
17 end of his career or alternatively faced the prospect of
18 termination of his employment. And my understanding is that
19 the way the GM pensions vest you require a certain number of
20 years of service in order for the pension to vest in, you
21 know, to the full amount that would be possible.

22 Because GM decided to terminate Mr. Jack's
23 employment or to offer him a voluntary retirement -- or a
24 so-called voluntary retirement he didn't fulfill the
25 requirements to vest his pension benefits in full.

1 I don't believe that constitutes a claim that can
2 be allowed under the Bankruptcy Code, and I don't think
3 Mr. Jack has fulfilled his obligations in terms of
4 discharging the claim.

5 THE COURT: Okay. Mr. Jack, any further comment?

6 MR. JACK: I guess -- no, I don't, Your Honor, I
7 guess I don't want to waste anybody's time on this. No, I
8 don't. Thank you.

9 THE COURT: Okay. Mr. Jack, Mr. Griffiths, I'm
10 going to do it a little differently this time so that the
11 folks who are on the phone at this point have comfort that
12 I've individually thought about each one of their claims.

13 I am going to incorporate my earlier dictated
14 rulings on these same issues so I don't have to repeat them
15 over and over again. But as a refresher, if you will, this
16 motion affects medical and life insurance benefits that are
17 called in the law employee welfare plans as contrasted as
18 different from pensions. The pensions are being honored as
19 a matter of bankruptcy law or as a practical matter because
20 the pensions are satisfied by trust and because the
21 commitments with respect to the pensions were taken over by
22 New GM.

23 So here there isn't much that I as the bankruptcy
24 judge with Old GM -- with the company that's now called
25 Motors Liquidation Company can do about pensions.

1 On the medical and life insurance benefits the
2 legal issue is whether when the employee was working -- and
3 I recognize that there's a gray area when the employee
4 worked for part of his or her time when there was no right
5 to change the benefits, and part of the time when there was
6 -- but the issue is whether the employee was on notice and
7 kept working when GM reserved the right to modify the plans.

8 It appears that in your case, Mr. Jack, for the
9 entirety of the time that you were employed GM had reserved
10 the right to change your benefits, and under a case out of
11 the Sixth Circuit Court of Appeals called Sprague versus
12 General Motors, which is controlling on me, or which is at
13 least the controlling precedent in this area, those become
14 part of your contract and therefore your contract includes
15 General Motors's right to change the benefits, which in this
16 case it did.

17 So fully understanding and respecting the pain
18 that having to rule this way imposes on folks who had worked
19 decades in many cases for GM, I'm compelled to disallow your
20 benefits claim, that is the insurance and the medical
21 benefits claim, making it clear that this is in no way
22 intended to affect your pension.

23 I'm sorry I can't do more for you, Mr. Jack, other
24 than to tell you that I've carefully considered your
25 contentions.

1 MR. JACK: Well, thank you, Your Honor.

2 THE COURT: Okay. You can either stay on the
3 phone or drop off as you prefer, Mr.

4 MR. JACK: Jack I'll drop off. Thank you.

5 THE COURT: Very good.

6 Next one, please, Mr.

7 MR. GRIFFITHS: Griffiths Your Honor, the next
8 claimant would be Timothy J. Kuechenmeister,
9 K-U-E-C-H-E-N-M-E-I-S-T-E-R.

10 THE COURT: Okay. Mr. Kuechenmeister, are you on
11 the phone? Mr. Kuechenmeister? CourtCall, do we show
12 Mr. Kuechenmeister as having -- as being on the phone?

13 COURTCALL OPERATOR: Your Honor, his line
14 disconnected.

15 THE COURT: Okay. Well, maybe it's because he got
16 tired of listening to me or maybe because he heard my ruling
17 with respect to Mr. Jack.

18 But under these circumstances, Mr. Griffiths, I
19 have to rule in his case the same way I ruled with respect
20 to Mr. Jack.

21 MR. GRIFFITHS: Yes, Your Honor.

22 The following claimant would be Mr. Glenn C.
23 Kuntz, K-U-N-T-Z.

24 THE COURT: Okay, Mr. Kuntz, are you on the phone?

25 MR. KUNTZ: Judge Gerber, my name Glenn Kuntz.

1 THE COURT: Okay.

2 MR. KUNTZ: I'm sorry, sir.

3 THE COURT: No, just speak a little louder if you
4 don't mind, Mr. Kuntz, because the phone line is a little
5 weak. Where are you calling from?

6 MR. KUNTZ: Calling from Dayton, Ohio.

7 THE COURT: Okay. And am I right that you and I
8 have spoken before?

9 MR. KUNTZ: Yes, sir.

10 THE COURT: Okay. Would you like to be heard
11 again in light of the new information?

12 MR. KUNTZ: I would like to be heard.

13 THE COURT: Go ahead, please.

14 MR. KUNTZ: Okay. Judge, I was an unclassified
15 executive employee with 35 years at GM, and those years are
16 from 1953 to 1988.

17 THE COURT: Pause, please. Did you say 1953 like
18 during the Korean War?

19 MR. KUNTZ: Yes, 1-9-5-3.

20 THE COURT: Okay. And the date -- the year of
21 your retirement again, please.

22 MR. KUNTZ: 1988.

23 THE COURT: Okay. Continue, please.

24 MR. KUNTZ: Okay. And I'd just like to comment
25 that nothing in that Smolinsky declaration disk that I

1 received speaks to unclassified executive employees.

2 Also there's no reference to special early
3 retirement, and that is exactly the basis that I left GM. I
4 closed the Fisher Guide (ph) plant in O'Leary, Ohio in 1988
5 and was told I could retire. I was told my life insurance
6 was fully in effect for life when I retired in 1988, period.
7 That's exactly what I was told. Basically I see that as a
8 retirement contract regarding my life insurance.

9 I'm now 77 years old and I base my wife's future
10 at my passing on the life insurance that GM promised. If I
11 could get comparable life insurance now with my current
12 health questions it would cost me at least \$3,000 a month,
13 which my pension cannot cover. And I just think with GM's
14 current profit it seems like they could easily fund my claim
15 for life insurance.

16 THE COURT: Okay. Mr. Griffiths, do you want to
17 respond?

18 MR. GRIFFITHS: Well, Your Honor, I'm mindful of
19 Your Honor's ruling with respect to Ms. Bogue and the fact
20 that Mr. Kuntz started work in 1953.

21 And it's worth noting that the -- in the folder we
22 provided you with a summary plan descriptions at Item B the
23 General Motors insurance program, at least from the earliest
24 date I have before we which is 19 I think 62, was split
25 between employees who earned either below \$750 a month or

1 above \$750 a month. I'm not aware of the classification
2 that Mr. Kuntz refers to in terms of an unclassified
3 salaried employee; however, it would make sense to continue
4 the claim to determine whether we could find any documents
5 going back to 1953.

6 Although Your Honor has ruled repeatedly with
7 respect to the life insurance program that GM did have the
8 right to amend or modify the program, and therefore it's
9 going to be difficult for the estate to find some sort of
10 common ground with Mr. Kuntz if he believes that he's
11 entitled to life insurance in full.

12 THE COURT: I agree; however, this is the way I
13 see the issues involving Mr. Kuntz.

14 First, if he started his employment as early as
15 1953 there are a lot of similarities between his situation
16 and Ms. Bogue as you recognize, Mr. Griffiths, so we need to
17 find out what the document said in the period from 1953
18 until 1963, which is now the earliest time that you have the
19 documents.

20 Secondly, if you haven't already done so I'd like
21 and Mr. Kuntz to trade the documents that each of you
22 believes were exchanged when he retired, which I think if I
23 heard him right was in 1988, to make sure you have them all.
24 And if there is a remaining disagreement at the time then
25 I'll decide it under the law.

1 MR. GRIFFITHS: Thank you, Your Honor.

2 THE COURT: Mr. Kuntz, was the sound quality of
3 the phone good enough for you to hear everything I had to
4 say?

5 MR. KUNTZ: Yes, I can hear you fine, I'm sorry if
6 I'm not coming across well.

7 THE COURT: Okay. So here's what we're doing, I'm
8 not ruling on it today. You and Mr. Griffiths, the lawyer
9 for motors liquidation is going to find what documents exist
10 for the period from 1953 to 1963 like he's going to do for
11 Ms. Bogue who was on the phone earlier, and also if you have
12 any documents that you were given when you retired in 1988
13 you should give them to Mr. Griffiths, and if you and he
14 can't agree on how your claim should be addressed I'll
15 decide it under the law.

16 So this matter is going to be continued. And once
17 again you're free to participate by phone.

18 MR. KUNTZ: Judge, can I add one more comment?

19 THE COURT: Of course.

20 MR. KUNTZ: I heard what Ms. Bogue said, and to my
21 knowledge I never saw any of these working GM pamphlets,
22 including the one -- the last one listed from 1977.

23 THE COURT: All right. Well, the fact that you
24 may not have seen them may or may not make a difference
25 depending on whether they were available to you. I

1 understand your position in that regard, but I'm not going
2 to decide it today.

3 At this point I want you to trade information with
4 Mr. Griffiths so that you guys can agree on what the facts
5 are, if possible, and then I'll decide what to do about it.

6 MR. KUNTZ: Thank you very much.

7 THE COURT: Okay, Mr. Kuntz. Same thought, you
8 can either stay on the line or drop off if you prefer.

9 MR. KUNTZ: I think I will stay on for at least a
10 little bit longer.

11 THE COURT: Fair enough.

12 Okay, Mr. McClain, is he next?

13 MR. GRIFFITHS: Yes, Your Honor.

14 THE COURT: George McClain?

15 MR. MCCLAIN: I'm here, my name is George McClain.

16 THE COURT: Okay.

17 MR. MCCLAIN: I'm in Little Rock, Arkansas.

18 THE COURT: You're in Arkansas?

19 MR. MCCLAIN: Yes.

20 THE COURT: In Little Rock?

21 MR. MCCLAIN: Yes.

22 THE COURT: Okay. Would you like to be heard,
23 Mr. McClain, now that we have more documents available?

24 MR. MCCLAIN: Yes, I would, please.

25 THE COURT: Go ahead.

1 MR. MCCLAIN: I have a little statement I'd like
2 to make.

3 THE COURT: Yep.

4 MR. MCCLAIN: In Attachment A to both of my claim
5 forms I presented valid evidence to the Court of both oral
6 and written contractual obligations covering the healthcare
7 and life insurance benefits I was to receive by accepting
8 early retirement at age 61 in 1984.

9 The written offer to me contained a document that
10 specifically stated, quote, "Complete details regarding
11 benefit plan continuation privileges are contained in the
12 enclosed booklet, your benefits and retirement."

13 The enclosed booklet I received did not contain a
14 reservation of rights clause. The debtors have not disputed
15 or denied two important facts. The statement about complete
16 details being contained in the enclosed booklet, or that the
17 -- your benefits and retirement booklet provided to me did
18 not contain the reservation clause.

19 On the contrary in item 19, pages 9 and 10 of the
20 debtor's reply filed June 5th, 2012 they use the word "most"
21 in referring to the debtor's handbooks that contained the
22 reservation of rights clause. Not the word "all" but the
23 word "most."

24 The debtors go on in item 19 to point out that the
25 reservation of rights clause was added in 1985 in later

1 additions of the your benefit and retirement booklet. But I
2 was retired in 1984.

3 I also provided the Court a letter dated May 30,
4 2008 from Metropolitan Life confirming that the group life
5 insurance certificates do not contain any language reserving
6 the right to change the plan or policy provisions.

7 I respectfully request the Court to follow legal
8 precedent and rule that any omission, error, or ambiguity in
9 the offer made to me by the debtors be interpreted adversely
10 to the debtors.

11 That's all I have to say, Your Honor.

12 THE COURT: Okay. Thank you, Mr. McClain.

13 Mr. Griffiths, would you like to respond?

14 MR. GRIFFITHS: Thank you, Your Honor. Your
15 Honor, in your folder containing the employee replies at tab
16 6 you'll find Mr. McClain's reply, and --

17 THE COURT: Well, I have a tab 6, but it's
18 monstrously thick. Can you help me find the --

19 MR. GRIFFITHS: Yes, Your Honor, if you turn to
20 page, I think it's the PDF at page 138, that's the Exhibit A
21 that Mr. McClain is referring to, which is the summary plan
22 description relating to his -- his retirement.

23 THE COURT: The page 138 I have --

24 MR. GRIFFITHS: Oh, excuse me, Your Honor, page --

25 THE COURT: -- is Mr. --

1 MR. GRIFFITHS: Page 33.

2 THE COURT: 33?

3 MR. GRIFFITHS: Yeah. In the top right-hand
4 corner.

5 MR. MCCLAIN: Mr. Griffiths, what document are you
6 referring to?

7 THE COURT: I have page 33 of 138, is that what
8 you're referring to, Mr. Griffiths?

9 MR. GRIFFITHS: Yes, Your Honor. If I could just
10 direct your attention to the language.

11 Although Mr. McClain has noted that the summary
12 plan description doesn't contain reservation of rights, this
13 is the type of language that we're referring to that we've
14 pointed out to Mr. McClain both over the telephone and in
15 the reply, and if I may just read for the record the
16 language, and for your benefit, Mr. McClain, I'm going read
17 this. We're referring to the reply that was filed to your
18 claim by General Motors, and at page 33. You may not have
19 page numbering on your document, I'm not sure, but I'll read
20 the specific reservation of rights clause. And it says:

21 "Each of the benefit plans has its own terms and
22 conditions, which in all respects control the eligibility
23 and the payment of benefits mentioned and the payment of
24 benefits is conditioned of course on your eligibility to
25 receive them. From -- and from time to time you may receive

1 information concerning changes in your benefits."

2 So this makes clear that by its own terms the
3 summary plan description requires you to refer to the
4 underlying plan documents, and it specifically refers to the
5 fact that benefits can be changed.

6 THE COURT: And you're saying --

7 MR. MCCLAIN: May I respond to that, Your Honor?

8 THE COURT: Yes, after I ask a question to
9 Mr. Griffiths.

10 And you're saying that the underlying benefit
11 plans do have that reservation of rights clearly?

12 MR. GRIFFITHS: Correct, Your Honor, going back
13 now 50 years.

14 THE COURT: Okay. Now you can speak, Mr. McClain?

15 MR. MCCLAIN: But it was not in the -- your
16 benefits and retirement booklet handed to me in 1984, which
17 supposedly complained -- contained complete details
18 regarding the continuation privileges of the healthcare and
19 life insurance. It just simply was not in the written offer
20 and acceptance and documents that I received and agreed to
21 when I accepted early retirement, and they acknowledge that
22 it was added to that booklet in 1985 in later editions.

23 THE COURT: Okay. Well here I think I understand
24 the issue then, and while I think I know what the law would
25 be I may need a clarification or I may not.

1 Mr. Griffiths, if the document that you read to me
2 was in existence when Mr. McClain retired I'm going to rule
3 unfortunately for Mr. McClain that GM did have the right to
4 change it.

5 The question I need your help on, if you can give
6 it to me today and if it can't be resolved today so that
7 Mr. McClain understanding it then we'll just have another
8 phone call, is was what you read to me in existence when he
9 retired in 1984?

10 MR. GRIFFITHS: Yes, Your Honor. And if I can
11 just refer you to the affidavit or the declaration rather of
12 Mr. Smolinsky there is the similar booklet dating from
13 November 1977 at Exhibit L, and page 3 contains a similar
14 reservation of rights language, which was the reason we put
15 these summary plan descriptions on file so that employees
16 who are referring to earlier copies of benefit plans that
17 they may not be able to otherwise provide can refer to these
18 copies as examples of what they would have received.

19 MR. MCCLAIN: But they were not provided to me.

20 THE COURT: Well, all right. With so many people
21 on the phone and in the courtroom I can't sort this out now,
22 but what -- we'll have one more phone call where the key
23 documents will be shown to me with an explanation as to when
24 they came into effect. If they were available to you
25 Mr. McClain I can't help you. If there -- if you -- is your

1 contention that they weren't available to you or you didn't
2 see them on the day you retired?

3 MR. MCCLAIN: As far as I know I've never received
4 anything but the benefits and retirement booklet. That was
5 the only thing ever provided to me.

6 THE COURT: All right. Here's what I want you to
7 do. I'm not sure if I have an issue of fact here or not. I
8 want you to send Mr. Griffiths, with a copy to the Court,
9 the booklet that you've got. I want you to make sure that
10 you guys agree on what you got and what you didn't get. And
11 Mr. Griffiths, you're free to show me stuff that was
12 available to him whether or not you're contending that he
13 got it, and then I'll rule in the next phone call. I can't
14 deal with it today.

15 MR. MCCLAIN: May I say one thing, Judge?

16 THE COURT: Yes, you can.

17 MR. MCCLAIN: My original claim included the
18 complete copy of the booklet provided to me in 1984, and
19 Mr. Griffiths has reproduced it but he never comments on it.
20 They comment on later editions, but they never comment on
21 the edition that I got that I submitted and that he has.

22 THE COURT: Well, I think we have ships passing in
23 the night here, because I think Mr. Griffiths thinks he was
24 commenting on earlier ones and we have a breakdown in
25 communication here through no fault of anybody's.

1 But the practical problem I have, Mr. McClain, is
2 I got two thick books that look like phone books here, and I
3 can't get to the bottom of it in fairness to both sides in
4 this call with this pile of stuff and still be fair to
5 everybody. So I need you guys to get on the same page, or
6 if you can't to agree to disagree, and if you do agree to
7 disagree I'll do my job and rule.

8 MR. MCCLAIN: All right, Your Honor, and I will
9 contact him and send him another copy if he needs another
10 copy.

11 THE COURT: Or you guys can get on the phone and
12 you can agree on what's there and what's not. I don't think
13 you need to send him more stuff unless you guys need to, but
14 I'm trying to give you your day in court and still comply
15 with the law, and --

16 MR. MCCLAIN: I appreciate it very much, Your
17 Honor.

18 THE COURT: Okay. Good enough. Thanks.

19 All right, next one, please, Mr. Griffiths?

20 MR. GRIFFITHS: Thank you, Your Honor, it would be
21 Mr. David Robertson, R-O-B-E-R-T-S-O-N.

22 THE COURT: Are you on the phone, Mr. Robertson?
23 Mr. Robertson?

24 Okay. With Mr. Robertson not being on the phone
25 your motion to disallow is granted, Mr. Griffiths.

1 MR. GRIFFITHS: Thank you, Your Honor.

2 The following claimant will be Mr. Joseph C.
3 Singer, S-I-N-G-E-R.

4 THE COURT: Right. Mr. Singer, are you on the
5 phone?

6 MR. SINGER: Yes, I am, Your Honor.

7 THE COURT: Would you like to be heard in light of
8 the new documents that are now available?

9 MR. SINGER: Yes, I would.

10 THE COURT: Go ahead, please.

11 MR. SINGER: I started with General Motors in 1951
12 and I retired in September --

13 THE COURT: I got noise problems. Did you say '51
14 like during the Korean War or '61 when --

15 MR. SINGER: No, no --

16 THE COURT: -- President Kennedy was -- I'm sorry?

17 MR. SINGER: 1951, and the --

18 THE COURT: 1-9-5-1.

19 MR. SINGER: 5-1.

20 THE COURT: Okay.

21 MR. SINGER: And I required in 1991, 40 years of
22 service.

23 THE COURT: Forty years of service.

24 MR. SINGER: Yes.

25 THE COURT: Okay.

1 MR. SINGER: When I retired it was a limbo five
2 (ph) retirement. and it was offered because they were tried
3 to get a number of people to retire at that time so they had
4 me sign the condition of early retirement, and they said
5 that the only way this could be (indiscernible - 00:41:53)
6 is if I would actually accept the conditions of early the
7 retirement. They said this plan was amended by the salaried
8 retirement program approved by the General Motors Management
9 Committee.

10 And they further stated in another paragraph that
11 the early retirement offer and my acceptance of this special
12 retirement offer constitutes and the entire and only
13 agreement between me and General Motors. I have no other
14 agreement with them.

15 And it went on to state that I was subject to
16 penalties if I would try to come back to work or do anything
17 else. And they also mentioned that what I should do is
18 contact an attorney before I sign this. Advice of attorney
19 was make sure you get everything in writing. So I did.

20 Limbo five stated that all of my benefits will be
21 for life and (indiscernible - 00:42:47) reduced and it said
22 that several places. A supplemental life benefit now will
23 be (indiscernible - 00:42:53) reduced for life for
24 executives who retire under the provisions of limbo five,
25 and they've stated that twice in that particular item.

1 They also gave me an authorization of monthly
2 benefits, and in that they stated again that my life
3 insurance, my supplemental life insurance in full for life.

4 Then later in March of 20 -- March 29, 1993 they
5 also sent me a letter that said this ultimate amount remains
6 in effect for the rest of your life, and it's provided by
7 General Motors at no cost to you.

8 So at least three of four times they said for the
9 rest of my life, they said that the program was amended in
10 (indiscernible - 00:43:37) and it was amended by the
11 executive committee, and I have it in writing.

12 Now, I -- if I would have violated this General
13 Motors -- if I tried to do something other than what they
14 stated they would have had a legal contract on me that said
15 that I couldn't -- couldn't get a new job within General
16 Motors or anything else.

17 So I've lived up to my end of it and now General
18 Motors is saying, well, they didn't have to abide by it.
19 Now, didn't both of us have to abide by this contract?

20 THE COURT: I couldn't hear the very last thing
21 you said, Mr. --

22 MR. SINGER: It seems like I had an agreement by
23 General Motors that both of us had to live to. I lived to
24 my end of it, but General Motors did not.

25 Now, if I violated it I'm sure General Motors

1 would have taken me to court.

2 I've also supplied that -- that conditions of
3 early retirement. All of this information should be in
4 Mr. Griffiths' hands right now.

5 THE COURT: Okay. Mr. Griffiths, do you want to
6 responds?

7 MR. GRIFFITHS: Your Honor, I would just refer to
8 Your Honor's earlier ruling with respect to Ms. Bogue in
9 light of Mr. Singer's employment from 1951.

10 We'll attempt to either come to a consensual
11 resolution with respect to his claim or to provide a copy of
12 the summary plan description from the commencement of his
13 employment.

14 Suffice it to say that Mr. Singer argues that his
15 welfare benefits became vested at the time he took early
16 retirement. The provisions of GM's early retirement
17 programs provided that while benefits may have been provided
18 earlier at the time of the early retirement they never
19 vested in full and could amended or terminated at any time
20 in accordance with the underlying plan documents.

21 But again, I would suggest this is a debate for
22 another day pending the GUC Trust locating copies of a
23 summary plan description from -- from the late '40s or the
24 early '50s.

25 THE COURT: Okay.

1 MR. SINGER: Well, I don't have a problem with the
2 description in the early '40s or '50s, my concern is that
3 when I signed this agreement, which you have, it says
4 conditions of early retirement and it stated that this was
5 amended by the salaried retirement program by General
6 Motors' committee. So they amended that program.

7 So even if it was and if it did state that this
8 was amended on the conditions of my early retirement, and
9 it's stated by my acceptance of this that I had no other
10 agreement with General Motors and this is the only agreement
11 I have.

12 THE COURT: Okay.

13 MR. SINGER: This is a violation of that earlier
14 agreement, I don't care if it's in the pamphlet, they
15 knocked it out right there by my conditions of early
16 retirement.

17 THE COURT: All right. I think I understand the
18 legal issue, but I don't have all legal facts I need to get
19 my arms around it yet.

20 I don't think Motors Liquidation is contending
21 that it has the ability to rewrite the contract or -- of
22 course it has breached it by -- if there is an agreement it
23 may have breached it, which is why you have claims, but the
24 underlying issue is what was your contract, and that
25 involves two things.

1 One, which puts you in the same category as
2 Ms. Bogue, and I think it was one other, perhaps Mr. Kuntz.

3 MR. GRIFFITHS: Mr. Kuntz, yes.

4 THE COURT: Which is we have to find out what the
5 documents provided in the early part of your working career,
6 Mr. Singer, from 1951 until 1963.

7 The second issue is that you're saying in
8 substance that the papers that you signed or that were
9 available to you when you retired in 1991 trumped any
10 earlier agreement.

11 I don't know whether that's true or not without
12 looking at them, but when you have the back and forth with
13 Mr. Griffiths over the next several weeks let make sure that
14 we have our arms around the right papers, and then hopefully
15 I won't have as many people on the phone and in the
16 courtroom and I can give you a more definitive answer at
17 that time.

18 But the bottom line is I'm not going to rule on it
19 today, and I take the you follow all of that, Mr. Singer?

20 MR. SINGER: Yes, I am not (indiscernible -
21 00:48:06) anything, I'm sure maybe some place I did receive
22 a booklet, I don't know for sure, but I'm sure it was
23 probably in there. I'm just saying that the conditions that
24 I retired under trump that booklet.

25 THE COURT: Yeah, I understood that, that was the

1 second contention I was talking about.

2 MR. SINGER: Okay.

3 THE COURT: And I'll -- and I'll focus on that
4 when we have it next before us.

5 MR. SINGER: Okay, Your Honor, thank you.

6 THE COURT: Okay, thank you.

7 Next after Mr. Singer, is that Mr. Sterett?

8 MR. GRIFFITHS: Mr. Sterett, yes, Your Honor.

9 THE COURT: Sterett, I'm sorry. Are you on the
10 phone, Mr. Sterett?

11 MR. STERETT: Hello, Your Honor.

12 THE COURT: Yeah, I hear you. Where are you
13 calling from, Mr. Sterett?

14 MR. STERETT: Detroit, Michigan.

15 THE COURT: Detroit, okay. And would you like to
16 be heard today?

17 MR. STERETT: Yes.

18 THE COURT: Go ahead, please.

19 MR. STERETT: I actually have nothing much to say
20 in addition to what I've already provided except that my
21 appeal to the Court is basically a moral one, and apparently
22 there's been a ruling that set a precedence that as you
23 spoke earlier, the right to -- GM reserving the right to
24 change. I didn't know if that had been morally tested.

25 I made decisions affecting the rest of my life,

1 particularly with healthcare when I took an early retirement
2 and it was based on the conditions presented to me at the
3 time; however, Mr. Griffiths and I both have reviewed my
4 contract on exit and it does contain the clause right to
5 change -- reserve the right to change.

6 So I just wanted to make that comment more of a
7 moral issue, and I had heard earlier. I signed the same
8 conditions that I would not work for General Motors again,
9 and I've held up my end of the bargain and they have not.
10 So --

11 THE COURT: Uh-huh.

12 MR. STERETT: -- I rest my case, I just wanted to
13 make that comment.

14 THE COURT: Okay. Mr. Griffiths, do you want to
15 comment?

16 MR. GRIFFITHS: No, Your Honor, thank you.

17 THE COURT: All right.

18 Well, I appreciate the candor and integrity by
19 which you argued that, Mr. Sterett. You raised a moral
20 issue, which is something which we judges wrestle with all
21 the time and which I've personally wrestled with I don't
22 know how many times over the last 12 years. Obviously I
23 have a moral sense of what I would like to do, but at the
24 same time I've gotten an oath to comply with the law, and as
25 a practical matter all I can do is make sure that we've left

1 no stone unturned in making sure that we have our arms
2 around the whole contract and that I've given everybody a
3 full and fair opportunity to be heard.

4 After I've done that, as a practical matter,
5 there's only one thing left that I can do which is to comply
6 with the law. And having done all of that, and because of
7 what the law requires, I am with regret required to rule
8 your way the same way that I ruled with respect to Mr. Jake
9 and a fair number of folks in the hearings that we've had
10 before today.

11 So with regret I am compelled to disallow this
12 claim for the reasons that I articulated at greater length
13 with respect to Mr. Jake today. And I'm sorry, Mr. Sterett,
14 but that's got to be the ruling. And you're free to either
15 stay on the phone or leave.

16 MR. STERETT: No, I'll get off, Your Honor, and
17 thank you for your consideration.

18 THE COURT: Okay, I appreciate your courtesy.
19 Is the last one Mr. David Volpe?

20 MR. GRIFFITHS: Correct, Your Honor.

21 THE COURT: Okay. Mr. Volpe, are you on the
22 phone?

23 MR. VOLPE: Yes, Your Honor, I am.

24 THE COURT: Okay. Would you like to be heard?

25 MR. VOLPE: Yes, I would.

1 THE COURT: Go ahead, please.

2 MR. VOLPE: I had originally argued from the
3 perspective that when I initiated, negotiated, and accepted
4 an early retirement in 2001 that General Motors and I had a
5 contract that had certain provisions, and those provisions
6 were a certain pension that I had earned, certain welfare
7 benefits that I had earned, and the fact that General Motors
8 has ex post facto come in and changed that agreement that we
9 had, I didn't think was right and I didn't think was legal.

10 It appears as though a precedence has been set
11 that allows them to do that, and I guess I'll have to direct
12 my efforts towards my elected officials to make sure that
13 others in the future don't fall prey to this.

14 But that notwithstanding, I did take a detailed
15 look at the documents that were sent to us on CD by
16 Mr. Griffiths and the debtor's attorneys, and I'm have
17 having a little difficulty finding exactly what Mr., I
18 believe it's Smolinsky, who signed that latest document is
19 referring to.

20 If I may -- my dates of employment again were
21 August 18th, 1969, Vietnam era, through -- actually my
22 retirement date was November 1st, 2002. If you go to
23 document -- the document and go to Exhibit M, and they
24 reference page 32, that is actually page 413 of 415, and I
25 would ask Mr. Griffiths if he's in agreement with that, if

1 we have the same documents and the same numbering scheme.

2 THE COURT: Okay. I'll ask Mr. Griffiths to
3 respond to it after you've made any further points you make.

4 MR. VOLPE: Okay. The -- when I go to page 413 of
5 the PDF document -- 413 of 415, there are three paragraphs
6 there and they do not say that General Motors reserves the
7 right to change, modify, terminate any of the language that
8 we've been talking about.

9 Furthermore, when I go to Exhibit L, which is the
10 one just before that, the cover document references page
11 number 3 of that document, and on my CD that is PDF page 344
12 out of 415, and that also does not say anything about
13 General Motors reserving the right to change, modify,
14 terminate benefits.

15 And I picked these two out because they were the
16 last in the list of exhibits and would be closer to -- my
17 tenor started as I said in 1969. You may remember I
18 indicated I was a co-op student that went to grad student on
19 a fellowship and actually started my active career in the
20 fall of 1975, so -- after schooling was done.

21 So these documents are not supportive of what the
22 cover document is saying, and unless I'm reading it
23 incorrectly I would ask for a clarification on that.

24 THE COURT: Fair enough. Okay. Mr. Griffiths?

25 MR. GRIFFITHS: Your Honor, Mr. Volpe has

1 correctly referred to the reservation of rights language
2 contained in the summary plan descriptions. With respect to
3 the most recent plan he referred to, Exhibit L, does note
4 that each of the benefit plans has its own terms and
5 conditions, which in all respects control the eligibility
6 and payment of the benefits mentioned.

7 THE COURT: Mr. Griffiths, I know you've read
8 these many times, but you have to slow down, because the
9 people who are on the phone haven't heard them as often as I
10 have.

11 MR. GRIFFITHS: Your Honor, it was simply to note
12 that Mr. Volpe's argument is that he would essentially like
13 to see the underlying plan documents, and if -- if that's
14 what Mr. Volpe would like to see in order to resolve his
15 claim to conclusively understand that the benefits could be
16 amended or modified then the GUC Trust is more than happy to
17 provide Mr. Robertson with -- or I'm sorry -- Mr. Volpe with
18 copies of the underlying plan documents. I've reviewed the
19 terms of the plan documents and can confirm that they do
20 contain the right to amend or modify. But if Mr. Volpe
21 requires those documents to achieve closure in the case then
22 the GUC Trust is more than happy to provide them to him.

23 THE COURT: Okay. I think I know the language
24 you're talking about, but let me put the question to
25 Mr. Volpe.

1 Mr. Volpe, would you feel a little more
2 comfortable if Mr. Griffiths showed you the exact language
3 and I didn't resolve it today?

4 MR. VOLPE: Actually not, Your Honor, what I'd
5 like to do is read the document -- the page of the exhibit
6 that is referenced having that language. Because I'm
7 looking at it, I'm looking at page 344 of the PDF document
8 which is page 3 of Exhibit L, and to my way of reading it I
9 don't see the language.

10 THE COURT: Are you referring, Mr. Griffiths to
11 the language that says, "Each of the benefit plans has its
12 own terms and conditions, which in all respects control the
13 eligibility and payment of benefits mentioned"?

14 MR. GRIFFITHS: Correct, Your Honor.

15 THE COURT: Mr. Volpe, that is the language upon
16 which ruled adversely to some of the other folks, including
17 Mr. Jack today, and I think it was Mr. -- what was it
18 Sterett today?

19 Do you have something else to bring to my
20 attention, Mr. Volpe?

21 MR. VOLPE: Your Honor, I also had submitted on
22 the 21st of June, subsequent to our last hearing on
23 June 14th, a document that was provided to me at retirement
24 indicating that, if I may read an excerpt, that the -- "Our
25 insurance records as of the date of this letter," which is

1 October 7th, 2002 -- "show the continuing life insurance has
2 now fully reduced to the ultimate amount of \$80,945. This
3 ultimate amount will remain in effect for the rest of your
4 life and is provided by General Motors at no cost to you."
5 End of excerpt.

6 THE COURT: Right, but the next sentence also
7 says, "This is not a guarantee of the coverage amount."

8 MR. VOLPE: That is correct.

9 THE COURT: Okay. Mr. Griffiths, further
10 comments?

11 MR. GRIFFITHS: No, Your Honor.

12 THE COURT: All right.

13 Mr. Volpe, with regret I'm going to have to rule
14 the same way in your case as I did with respect to Mr. Jack,
15 and kind of incorporate what I said before.

16 The issue as a matter of law is getting our arms
17 around what was each employee's contract during the time
18 that he worked and at the time when he retired. And the
19 language from that page 3, which made specific reference to
20 -- and I'm going to read it again so there's no ambiguity.
21 "Each of the benefits plans has its own terms and
22 conditions, which in all respect control the eligibility and
23 payments of benefits mentioned." Kind of consider an
24 emphasis on the word "control." And for those people who
25 worked during the time that old GM had reserved the right to

1 modify my hands are tied.

2 So all I want you to know is that I've considered
3 your claim and your contentions as fairly as I could, but
4 that's got to be my ruling.

5 MR. VOLPE: I appreciate that. I was hoping for
6 possibly an epiphany and maybe a John Roberts moment, but as
7 I said earlier, I will direct my efforts towards my elected
8 officials to see if the laws can be changed that you can
9 interpret in that direction to save future employees and
10 retirees a lot of the heartache and heartbreak that we've
11 gone through with this.

12 THE COURT: Well, I'm not allowed to get involved
13 in politics, but I certainly -- as a citizen and not a judge
14 you have my support.

15 MR. VOLPE: I thank you again.

16 THE COURT: Okay, fair enough.

17 Is that the last of yours, Mr. Griffiths?

18 MR. GRIFFITHS: It is, Your Honor.

19 And just to note that the GUC Trust appreciates
20 the Court's time in attempting to resolve these matters, and
21 of course we have repeatedly tried to settle many of these
22 -- these matters and will continue to do so, but
23 unfortunately it isn't always possible.

24 THE COURT: I understand.

25 MR. GRIFFITHS: Your Honor, I have the pleasure of

1 introducing Katie L. Cooperman of Dickstein Shapiro to
2 handle the following item on the agenda, I believe the 281st
3 omnibus objection to claims in relation to insufficient
4 documentation. It's an uncontested omnibus objection.

5 THE COURT: Fair enough. Ms. Cooperman?

6 MS. COOPERMAN: Good morning, Your Honor, Katie
7 Cooperman from Dickstein Shapiro on behalf of the GUC Trust.

8 Today we have one uncontested omnibus objection.
9 It's the 281st omnibus objection to 16 claims based on
10 insufficient documentation. Of those 16 claims we've
11 adjourned 3 and withdrawn 3.

12 Today we're going forward with the remaining ten
13 claims on an uncontested basis.

14 Unless the Court has any questions we'll submit an
15 order to chambers.

16 THE COURT: That's fully satisfactory,
17 Ms. Cooperman, your objections are sustained and you can get
18 the paperwork to my chambers as soon as convenient.

19 MS. COOPERMAN: Thank you.

20 THE COURT: Thank you.

21 MR. GRIFFITHS: Thank you, Your Honor.

22 We also have Mr. Rachmuth in the court this
23 morning from Gersten Savage LLP who is handling the Anderson
24 -- or the motion of award of attorneys' fees in relation to
25 Anderson Class Counsel.

1 THE COURT: Come on up, folks. Hi, I think you've
2 been here before haven't you?

3 MR. RACHMUTH: Yes, Your Honor. Paul Rachmuth,
4 Gersten Savage, I also have in the courtroom with me, A.J.
5 De Bartolomeo.

6 MS. DE BARTOLOMEO: Good morning, Your Honor --

7 THE COURT: Good morning.

8 MS. DE BARTOLOMEO: -- A.J. De Bartolomeo.

9 MR. RACHMUTH: Sorry. Representing Class --

10 THE COURT: You can sit if you don't want to keep
11 standing, Ms. De Bartolomeo.

12 MS. DE BARTOLOMEO: Actually I've been sitting for
13 quite a while, Your Honor, if you don't mind I prefer to
14 stand.

15 THE COURT: Fine with me.

16 MR. RACHMUTH: Your Honor, the client that I
17 represent is the Class Counsel in the Anderson class actions
18 lawsuits.

19 There was a protracted case that was settled
20 prepetition, it was a claim that was filed for those unpaid
21 amounts. The law firm, Girard Gibbs, had worked post-
22 petition to resolve this resulting in an allowed claim.

23 We had filed with your court a request initially
24 for notice to all the class parties to allow payments for
25 the -- for the Class Counsel. We received 25 responses,

1 mostly positive. We've summarized all those papers in
2 A.J.'s declaration.

3 I'd like to -- if the Court would like we can
4 summarize -- allow her to summarize right now.

5 The end result of this is we filed with Your Honor
6 a proposed order allowing for those fees, after putting
7 everybody on notice and receiving no objection from the --
8 the debtor is taking no position. And the only comments
9 were from the specific class members. Again, many in
10 support.

11 There were some that were sent directly to law
12 firm that were not send to the Court, we have attached those
13 as an exhibit to an affirmation that was filed. I have
14 copies of all the documents.

15 THE COURT: What I'd like to do, folks, is see if
16 there is anybody who's on the phone or in the courtroom who
17 wants to be heard. I know from our earlier proceedings what
18 you did, I'm aware of the no object from the estate and from
19 the creditor community. So let's pause for a second.

20 Does anyone want to be heard in opposition to this
21 settlement? Either -- there's no response in the courtroom.
22 Is there anybody on the phone who wants to be heard?

23 Ms. De Bartolomeo, me tentative California style
24 is to approve your settlement, but if you want to be heard
25 I'll let you.

1 MS. DE BARTOLOMEO: Your Honor, my response
2 California style is when the judge rules your way to say
3 thank you very much and sit down and appreciate your time.

4 THE COURT: Okay. Under these circumstances I am
5 going to be approved the settlement.

6 I know the haircut that counsel had to take as a
7 consequence of the timing of the prepetition near, but not
8 quite final finalization of the settlement. I know the
9 post-petition services you guys performed and I'm satisfied
10 that you did your job and that you were able to slice the
11 baby between representing your class and still being
12 responsible to the needs and concerns of the creditor
13 community in this case.

14 So your request for attorneys' fees is approved.
15 And I'd ask that one of the two of you just deal with the
16 paperwork in getting it to my chambers.

17 MR. RACHMUTH: I have it on -- I have a proposed
18 order that was submitted, I also have it on disk in Word
19 format, I will hand it off.

20 THE COURT: Okay, my courtroom deputy is down the
21 hallway and you can just drop it off with her and you can
22 tell her that I approved it.

23 MR. RACHMUTH: Thank you very much, Your Honor.

24 THE COURT: Okay. Thank you very much. Have a
25 good flight back.

1 MS. DE BARTOLOMEO: Thank you, Your Honor, and
2 thank you for your --

3 THE COURT: Have a good day.

4 MS. DE BARTOLOMEO: -- time.

5 THE COURT: Okay. Do we now have anything other
6 than Aurelius?

7 MR. GRIFFITHS: No, Your Honor.

8 THE COURT: Okay. Well, Mr. Griffiths, you and
9 anybody who came with you is excused on that. I don't want
10 to take a long break. Let's again at 11 o'clock on
11 Aurelius. We're in recess.

12 (Recess at 10:54 a.m.)

13 THE COURT: Have seat, please. All right, the
14 Aurelius summary judgment motion.

15 As always I've read the papers, but we've been
16 through this so many times, and I'm so familiar with things
17 and so are you that let's just go straight into arguments.

18 So, Mr. Friedman, refresh my recollections, I'll
19 hear from you.

20 MR. FRIEDMAN: May id please the Court Edward
21 Friedman, Friedman Kaplan Seiler & Adelman representing
22 Aurelius Investment, LLC. Good morning, Your Honor.

23 This is a motion for summary judgment to dismiss
24 all claims in the amended complaint as against Aurelius
25 Investment. Our motion presents a narrow legal issue.

1 In this adversary proceeding the GUC Trust seeks
2 subordination, disallowance, or reduction of Nova Scotia
3 guarantee claims. No affirmative relief is sought as
4 against Aurelius Investment or for that matter as against
5 any other defendants.

6 We submit that because Aurelius Investment has
7 sold all the Nova Scotia notes it owned, because Aurelius
8 Investment no longer has any claim in this case and no
9 longer has any interest in distributions in respect of the
10 guarantee claims, and because Aurelius Investment has
11 nothing to subordinate, disallow, or reduce the claims
12 against our client should be dismissed.

13 Before jumping into the legal arguments that will
14 be before Your Honor this morning, I would like to be clear
15 concerning what is in dispute and what is not.

16 There is no dispute that Aurelius Investment sold
17 its entire position in the Nova Scotia notes in April 2011.
18 That fact is set forth in the Aurelius Investment statement
19 of undisputed facts and in paragraph 4 of the GUC Trust
20 counter-statement. The plaintiff confirms that there's no
21 dispute as to that fact.

22 With respect to legal issues there have been
23 various arguments at various times advanced by the GUC Trust
24 as to why supposedly in its view a former holder of a claim
25 based on publicly traded notes maybe sued for subordination

1 and related claims.

2 We have heard a whole series of arguments that
3 have been shown to be without merit or effectively withdrawn
4 or abandoned. I just want to mention them briefly so that
5 if counsel for the GUC Trust when it's his turn wants to
6 stand up and say, no, no, we are pressing that argument,
7 I'll have an opportunity to address it in more detail. Very
8 briefly.

9 THE COURT: Better yet, why don't you triage the
10 arguments you want to make today to those that you
11 understand the GUC Trust still to be making, and I'll give
12 you the chance to respond if they, contrary to your
13 understanding, raise points that you thought were off the
14 table. That may save a little time.

15 MR. FRIEDMAN: Okay. Maybe if I may just for the
16 record I'll say in one sentence the arguments that we have
17 seen from the beginning of this adversary proceeding that
18 seem to have been effectively abandoned are one, their
19 argument concerning Sections 5.1 and 5.10 of the plan; two,
20 their related argument concerning the effect of a notice of
21 transfer of claim or the absence of a notice of transfer of
22 claim; and three, their argument that the -- that the claims
23 asserted in this adversary proceeding by the GUC Trust
24 should be viewed as in rem claims.

25 THE COURT: I didn't understand them to have

1 dropped the last one, I just didn't understand that to be
2 your fight.

3 MR. FRIEDMAN: Well, I think if I understand Your
4 Honor correctly, our position with respect to that last
5 item, which we heard for the first time at the argument on
6 the motion to dismiss on June 15.

7 Our position very simply is that the GUC Trust
8 claims as against Aurelius Investment are not in rem claims.
9 Aurelius Investment has been named as a defendant in this
10 adversary proceeding, the claims asserted require the filing
11 of an adversary proceeding, which means notice and hearing
12 and to begin with the identification of an appropriate
13 defendant who will be served with -- with process.

14 So as I read the GUC Trust opposition I don't see
15 the assertion anymore, and I could be mistaken, I don't see
16 the assertion anymore that because in their view somehow
17 these are in rem claims Aurelius Investment should remain as
18 a proper defendant.

19 I would just add even if the claims were properly
20 viewed as in rem claims the conclusion would be all the more
21 reason why a particular named defendant is actually not
22 necessary or appropriate.

23 But beyond --

24 THE COURT: It's your real point isn't it?

25 MR. FRIEDMAN: Say again?

1 THE COURT: The second thing you said just as I
2 was interrupting you, that's your real point isn't it?

3 MR. FRIEDMAN: Well, our real point, Your Honor,
4 is that Aurelius Investment is not the proper defendant here
5 because for the reasons I was explaining at the very
6 beginning, there's no relief that is requested in the
7 complaint that is available or effective as against Aurelius
8 Investment.

9 Aurelius Investment at one time owned Nova Scotia
10 notes, and by virtue of Aurelius Investment in the past
11 having been an owner of those notes Aurelius Investment
12 filed a proof of claim. But the record is clear, the facts
13 are undisputed, Aurelius Investment has sold its notes and
14 Aurelius Investment has stated on the record, I myself have
15 stated it repeatedly, Aurelius Investment is not asserting
16 any claim in this case. Aurelius Investment is not seeking
17 any distribution in this case.

18 The whole point of the GUC Trust amended complaint
19 is to reduce the distributions going to the Nova Scotia
20 noteholders. Since Aurelius is not a Nova Scotia noteholder
21 Aurelius has no interest in the Nova Scotia noteholder
22 guarantee claim and no interest in whatever is resolved
23 concerning the distributions to be provided to noteholders.

24 In fact I might mention since I know it's on Your
25 Honor's calendar after this argument, we have the question

1 of a mediation that was proposed by counsel for one of the
2 parties, counsel -- Mr. Reisman. And I have communicated to
3 Mr. Reisman, I don't mind saying it in court, I don't see
4 how Aurelius Investment could participate in a mediation.

5 The GUC Trust is looking for the defendants to
6 take less in the way of distributions of New GM stock than
7 the defendants believe they are entitled to. And I would
8 imagine that the negotiation in a mediation would be in the
9 nature of the GUC Trust saying our position is that the
10 distributions to the Nova Scotia noteholders should be
11 limited as follows, and the defendants in the mediation
12 would be saying, no, we disagree, you know, we think we're
13 entitled to this full distribution, but for purposes of
14 settlement and mediation we're willing to accept somewhat
15 less.

16 Aurelius has nothing to say about that. Whatever
17 happens, whatever is resolved it will have no effect on
18 Aurelius.

19 And by virtue of Aurelius having sold its Nova
20 Scotia notes in April 2011 we believe that there's no basis
21 whatsoever for the GUC Trust having filed the adversary
22 proceeding as against Aurelius and no basis for the GUC
23 Trust to maintain the claims as against Aurelius.

24 And that really brings me to what I understand is
25 the main argument now being advanced by the GUC Trust. And

1 when I say what I understand it's not guesswork, I'm
2 obviously looking at the papers that they filed. And what
3 we see in the GUC Trust opposition, which was filed six days
4 ago this past Friday, what we see is that we are now dealing
5 with a newly minted argument that we have not previously
6 heard from the GUC Trust, even though there's been a period
7 of many months of correspondence, discussions, motion
8 practice concerning whether Aurelius Investment is a proper
9 defendant in this case.

10 And the argument we now see, this brand new
11 theory, is that according to the GUC Trust by virtue of
12 Federal Rule of Civil Procedure 25(c), Aurelius Investment
13 is a proper defendant even though it sold its entire
14 position in the Nova Scotia notes, and even though as the
15 GUC Trust acknowledges that sale occurred approximately a
16 year before the adversary proceeding began.

17 Rule 25(c) provides:

18 "That if an interest is transferred an action may
19 be continued by or against the original party unless the
20 Court on motion orders the transferee to be substituted in
21 the action or joined would the original party."

22 The problem for the GUC Trust is that Rule 25(c)
23 applies in the case of transfers during the action.

24 Here almost a year before the adversary proceeding
25 was filed Aurelius had sold its Nova Scotia notes and no

1 longer had any interest in those notes or the guarantee
2 claim associated with them.

3 The fact is that Rule 25(c), which we are hearing
4 about for the first time last week, is completely
5 inapplicable here and provides no support for the GUC Trust
6 position. The rule only applies in the case of transfers of
7 interest during an action and that did not happen here.

8 To try to avoid this inescapable conclusion and to
9 try to fit itself into Rule 25(c) the GUC Trust asked the
10 Court to deem the claim objection as part of the adversary
11 proceeding and to consider the filing of the proof of claim
12 and the claim objection and the adversary proceeding to be
13 one proceeding.

14 The problem with that, Your Honor, is that the
15 claim objection and the adversary proceeding are not the
16 same proceeding. The rules make clear, the case law makes
17 clear, an adversary proceeding is a separate proceeding.

18 The GUC Trust is seeking relief in the nature of
19 equitable subordination, that relief is being requested,
20 needs to be requested in an adversary proceeding, and that's
21 what they're doing. And they improperly named Aurelius
22 Investment as a defendant in the adversary proceeding, even
23 though Aurelius Investment had no claim in the case, no
24 ownership of notes, no basis for subordination or reduction.

25 I would note that in the claim objection, whether

1 that's combined with the adversary proceeding as I
2 understand the GUC Trust is seeking to do, or whether it is
3 heard separately, doesn't matter; combined, separate, it is
4 a separate proceeding. Aurelius Investment is not asking
5 for any relief in connection with the claims objection
6 proceeding. That is what it is. Aurelius Investment has
7 stated on the record that it has no interest in claim number
8 66265 that it had filed at the time proofs of claim were due
9 to be -- were due to be filed.

10 We've heard argument from the GUC Trust that if
11 Aurelius Investment is seeking dismissal in this adversary
12 proceeding then Aurelius Investment should withdraw the
13 proof of claim that it filed. But the fact is, and this is
14 undisputed, Aurelius Investment has no ownership interest in
15 that proof of claim. We're not aware of any principal
16 theory argument that would make it appropriate for Aurelius
17 Investment, after it has sold the note, after it has no
18 interest in the proof of claim to engage in action regarding
19 that proof of claim such as filing a withdrawal with respect
20 to it.

21 And I'll just reiterate that for the record we
22 believe we have done all that we can be reasonably asked to
23 do with respect to claim number 66265, which is to say we
24 have no interest in it and whatever the GUC Trust is
25 pursuing in the adversary proceeding concerning

1 subordination, reduction of that claim, Aurelius has no
2 interest in that.

3 The -- there are a bunch of other arguments that
4 we see in the GUC Trust papers that I'll mention very
5 briefly.

6 One is that even if the Court agrees with Aurelius
7 Investment that Aurelius Investment is not a proper
8 defendant in this adversary proceeding, the GUC Trust asked
9 the Court to allow the claims to continue against Aurelius
10 Investment as a nominal or relief defendant.

11 Those concepts, which we see from time to time in
12 the case law, arise in situations that have absolutely
13 nothing to do with the circumstances here.

14 There are cases, for example, cited by the GUC
15 Trust where in a claim alleging violations of the securities
16 laws, there is someone other than the wrongdoer who was the
17 recipient of funds, such as the fruits of insider trading,
18 and that person who received the funds is not alleged to
19 have engaged in any wrong doing. But the courts will say by
20 virtue of that person having received ill gotten gained that
21 person should be what is sometimes referred to as a relief
22 defendant. But in this case just the opposite is true.
23 There is no relief available as against Aurelius Investment.

24 The GUC Trust also points to cases in which courts
25 have permitted defendants to be designated as nominal

1 defendants. For example, an agent or an indenture trustee
2 may be a nominal defendant even though it has no economic
3 stake in the outcome. But here Aurelius is not like an
4 indenture trustee or other agent, it's not an appropriate
5 nominal defendant.

6 Another classic example is a corporation in a
7 shareholder derivative action is viewed as a nominal
8 defendant, a necessary party on the defendant side but not
9 someone against whom claims are being asserted.

10 Finally the GUC Trust argues if all else fails the
11 Court's equitable powers should be invoked to keep in
12 Aurelius Investment as a defendant.

13 I find that argument astonishing. If anything,
14 the equities here require that the claims against Aurelius
15 Investment be dismissed right now at long last before
16 Aurelius Investment incurs further legal expenses as a party
17 over and above the tremendous expenses that have been
18 occurred.

19 The case law -- even the case law relied on by the
20 GUC Trust in its appeal to the Court's equitable powers
21 makes very clear that the equity power of the Bankruptcy
22 Court does not countenance results that are contrary to
23 legal principals.

24 So to the extent the conclusion is that the claims
25 against Aurelius Investment should be dismissed because

1 there's no basis for seeking such relief against Aurelius
2 Investment, the Court's equitable powers would not provide a
3 basis for keeping Aurelius Investment in the case.

4 For all of these reasons, obviously all is more
5 fully set forth in our papers, Your Honor, we respectfully
6 submit that the claims in the amended complaint should be
7 dismissed as against Aurelius Investment.

8 Thank you.

9 THE COURT: All right, thank you.

10 Mr. Fisher?

11 MR. FISHER: Good morning, Your Honor, Eric Fisher
12 from Dickstein Shapiro for the GUC Trust.

13 This dialogue between Aurelius and the GUC Trust
14 has been going on for a long time. It took the form of
15 letters and phone calls, then it took the form of a motion
16 to dismiss, and now it's taking the form, Your Honor, of a
17 summary judgment motion.

18 And reducing each side's argument to its bare
19 caricature essentially Aurelius has been saying for a long
20 time we sold our notes in April 2011 let us out, and the GUC
21 Trust has been saying for a long time, you filed a proof of
22 claim, every document filed with the Bankruptcy Court, the
23 claims register, every other public indication says you're
24 the holder of record of that proof of claim and so we can't
25 let you out. Reduced to caricatures that's the argument

1 here.

2 And then both sides, Your Honor, tried to find
3 sound legal footing for their positions. And I would say
4 that at the motion to dismiss argument that Your Honor heard
5 both sides were trying to fit square pegs into round wholes.
6 The GUC Trust was arguing that plan provisions 5.1 and 5.10
7 suggest that Aurelius is a proper party. Your Honor pointed
8 out at the motion to dismiss argument that those plan
9 provisions concern distribution and didn't seem to bear on
10 the question before the Court. I think both parties now
11 agree that that -- that those plan provisions are really
12 besides the point.

13 Aurelius at that argument and at this argument as
14 well in its papers sites to cases that have nothing to do
15 with the issue before the Court. The kinds of cases that
16 Aurelius relies on for instance are an ERISA case where the
17 case is dismissed because you're supposed to name the plan
18 administrator. Or a federal tort claims act case where the
19 case is dismissed because you're suppose to name the United
20 States not the individual tortfeasor. And cases of that
21 sort.

22 And so we come to you today with a new argument.
23 It is true in our papers last week was the first time that
24 we raised the issue of Rule 25. And I can tell you that as
25 a team as we continued to cogitate on the issues raised by

1 Aurelius when we saw Rule 25 it was as though the answer was
2 just staring us right there in the face. Because I think
3 Rule 25 does provide the answer to what had seemed to be an
4 issue as to which it was difficult to find sound legal
5 footing.

6 Your Honor, Rule 25(c) says, quote, "If an
7 interest is transferred the action may be continued by or
8 against the original party."

9 So here Aurelius is saying that its interest was
10 transferred and we're saying that this action may be
11 continued by or against Aurelius, the original party.

12 "Unless the Court on motion orders the transferee
13 to be substituted in the action or joined with the original
14 party. The motion must be served as provided in Rule
15 25(a)(3)."

16 Obviously, Your Honor, there's been no motion
17 brought under Rule 25(c) to have Aurelius' transferee
18 substituted as the party. The reason no such motion has
19 been brought, among perhaps other reasons that I'm not privy
20 to, but one of the reasons is that Aurelius can't identify
21 the transferee, and as we pointed out to Your Honor at the
22 motion to dismiss argument it would take years of
23 international discovery to perhaps find out who the true
24 beneficial holder is of Aurelius' claim, and then once we
25 find it out under Aurelius' theory of the case that

1 beneficial holder could sell the claim and then we wouldn't
2 have a party and we'd have to -- we'd have to start over.
3 That's why Rule 25(c) says what it says. It puts the burden
4 of identifying the proper party on the transferor, not in
5 this case on the GUC Trust, Your Honor.

6 THE COURT: Mr. Fisher, Morris Federal Practice
7 seems to say in baby talk in its section on 25(c) that it
8 only applies to transfers occurring during the pendency of
9 the litigation.

10 I understand the practical problem you have, but,
11 you know, Morris Federal Practice doesn't have the ax to
12 grind that your opponent does. How do you respond to that?

13 MR. FISHER: Your Honor, I haven't seen any case
14 law that construes that notion in the same action in some
15 technical way. I mean, I've -- I've seen cases that refer
16 to it in different ways, including cases cited by earliest
17 that talk about it has to be in the same litigation. So
18 they're construing action very narrowly.

19 But I want to try to -- I -- I do think that if
20 there is any weakness in the 25(c) argument it is precisely
21 that issue, and so I want to try to address that as
22 forthrightly as possible.

23 The -- there's no dispute that Aurelius held its
24 proof of claim when the GUC Trust filed its initial
25 objection in this case in July 2010 and when it amended that

1 objection in November 2010. That objection sought relief,
2 including re-characterization and equitable subordination.

3 Then during the interim period after that
4 objection was filed and amended Aurelius sold its notes,
5 such that it was not a holder of notes as of when we
6 commenced the adversary proceeding.

7 We think that it's clear that these proceedings;
8 the contested matter, claim objection, disallowance
9 proceeding, and the equitable subordination adversary
10 proceeding are the same litigation.

11 And just to provide some factual examples of that
12 and then, Your Honor, I -- I think I have a case that speaks
13 to the issue as well, but to provide some factual examples
14 the scheduling order in this case is a scheduling order with
15 regard to the claim objection and the adversary proceeding.
16 It's explicit about that.

17 In the disclosure statement in this case a portion
18 of the disclosure statement was written by Greenberg Traurig
19 so that they were given an opportunity to recite their
20 version of the GUC Trust claim objection. When -- in that
21 section Greenberg Traurig acknowledges that there was a
22 claim of equitable subordination that had been raised in the
23 objection.

24 So this is, Your Honor, a continuation -- a
25 continuous proceeding. It's all of the same issues.

1 Mr. Zirinsky at a discovery -- in a discovery dispute before
2 Your Honor said -- and this was a discovery dispute before
3 the GUC Trust commenced its adversary proceeding, that --
4 that we were contending that the noteholders had acted
5 inequitably with respect to that lockup agreement and that
6 we were seeking equitable subordination. In other words, it
7 -- it was crystal clear before Aurelius sold its notes that
8 this was already a litigation about equitable subordination
9 and about recharacterization.

10 We also think, Your Honor, that the
11 recharacterization claim was not in any way procedurally
12 defective having been asserted in that original objection,
13 but as we've said many times in an abundance of caution we
14 included it as part of adversary complaint because Greenberg
15 Traurig was not willing to agree that it was properly raised
16 in the context of an objection and said that we would remove
17 it from the adversary at our peril.

18 So with regard to recharacterization, there's no
19 doubt that this has been one continuous litigation where as
20 early as July 2010 before Aurelius sold its notes while it
21 was still indisputably a holder of notes the
22 recharacterization claim was being litigated.

23 They -- they sold their -- they sold their notes
24 after discovery was well under way, Your Honor, and that
25 discovery was ultimately by agreement of the parties.

1 Deemed to be discovery that could be used both in the
2 hearing to be held with regard to the claims objection and
3 the adversary proceeding.

4 Those are some examples of the facts here that I
5 think suggest that this is one litigation and that -- that
6 Aurelius held its notes while this litigation was still
7 pending.

8 In terms of legal support, Your Honor, there is a
9 case that we found from the northern district of Texas
10 called In re: Basin Resources. It's a bankruptcy case, 182
11 B.R. 489.

12 And what -- what happened in that case was a
13 creditor had filed a proof of claim and then the debtor
14 brought an adversary proceeding seeking to equitably
15 subordinate the proof of claim on the grounds that it arose
16 from a securities.

17 And when it came to the hearing of the matter the
18 debtor wanted to rely on an admission in the proof of claim,
19 and the evidentiary question was whether that admission in
20 the proof of claim was a judicial admission. And that
21 turned on the question of whether that proof of claim and
22 that adversary complaint were part of the same proceeding.

23 And the Court ruled that under those circumstances
24 that was the same proceeding. And what the Court said
25 there, I think is equal -- equally applicable to the issue

1 before the Court today. What the Court said was, quote:

2 "Although the proof of claim in the instant case
3 was filed in the general bankruptcy case, this adversary is
4 in effect and objection to that claim. If this were merely
5 the usual contested matter involving the objection to the
6 claim there would be no question that the statements in the
7 proof of claim would be judicial admissions.

8 An objection to claim matters, the proof of claim
9 is seen as the initial pleading. The objection to proof of
10 claim is the responsive pleading. A proceeding to
11 subordinate a claim commenced pursuant to Section 510 of the
12 Bankruptcy Code is simply an objection to claim, which has
13 the added procedural and substantive requirements of an
14 adversary proceeding." Close quote.

15 I think that those principles apply equally here
16 to say that this is one unitary proceeding, Your Honor.

17 During oral argument, Mr. Friedman said that
18 Aurelius is not seeking to, quote "get out of" the claim
19 objection proceeding. Presumably that's because they can't
20 dispute that they were a holder of notes at the time that
21 the claim objection was filed.

22 If that's the case, it just -- it just leads to a
23 nonsensical result where Aurelius is part of a claim
24 allowance proceeding where recharacterization and equitable
25 subordination were raised in the objection and then not part

1 of the adversary proceeding. We -- we don't even --

2 THE COURT: Well, the point you're making would
3 have equal validity if whoever got this claim shows up and
4 tries to collect from the estate and then says, uh, uh, uh,
5 you can't equitably subordinate me or disallow me because
6 you didn't bring an adversary proceeding. Then your case
7 would be on all fours. But if you're laying this as a
8 predicate for 25(c) compliance it's a little more of a
9 stretch.

10 What -- what you're really saying is you don't
11 want me to forget that Basin case when Joe Eshinese (ph)
12 shows up and says, I want their -- what is it, 138 million
13 bucks worth of --

14 MR. FISHER: Yes.

15 THE COURT: -- claim or something like that. I --
16 I assume you're going to remind me of that case then.

17 MR. FISHER: Of course, Your Honor, but it really
18 matters to us in terms of ensuring that we can get all the
19 relief we think that we'll ultimately be entitled to at the
20 conclusion of trial to have Aurelius as a party and -- and
21 Rule 25(c) is relevant to that.

22 What -- what the Third Circuit said about Rule
23 25(c) in the Luxliner case, 13 F.3d 69, quote "Rule 25(c)
24 does not require that anything be done after an interest has
25 been transferred." Close quote.

1 The idea being the action just continues against
2 the original party, even though the interest has been
3 transferred. Quote:

4 "When a defendant corporation has merged with
5 another corporation, for example, the case may be continued
6 against the original defendant and the judgment will be
7 binding on the successor, even if the successor is not named
8 in the lawsuit." Close quote.

9 That's why we think if Aurelius is legally the
10 right party under Rule 25(c) and the burden is on them to
11 identify who the proper transferee defendant is, and they
12 haven't made a motion under Rule 25(c), and they can't
13 identify who the proper transferee defendant is, we think
14 that by keeping them in, because legally they are the
15 correct party, it just ensures that any judgment we get
16 against them will also be binding on any successor that may
17 come to the Court later.

18 Now, I understand there may be post judgment due
19 process type challenges to a judgment like that, but we
20 think we would be on much sounder footing if we -- if we
21 litigated to conclusion with Aurelius as the party. And as
22 Your Honor is aware we've done everything we can to try to
23 put the world on notice of this hearing that is scheduled to
24 commence on August 7th.

25 THE COURT: How as a practical matter do I apply

1 or enforce 25(c) if Aurelius doesn't know who got it?

2 MR. FISHER: I -- I think, Your Honor, it -- it --
3 25(c) in a sense is not before the Court because no one has
4 made a move -- a motion to substitute someone in place of
5 Aurelius, and that is not the Court's problem; that is
6 Aurelius' problem. And the law seeks to ensure that someone
7 who was a party to a litigation is stuck in that litigation
8 until they're in a position to make a motion to argue that
9 someone else ought to be substituted or joined with them.
10 That's what the rule provides.

11 It wouldn't even necessarily get Aurelius out.
12 They could make a motion under Rule 25 and then a transferee
13 would be added as a party.

14 We also think, Your Honor, that our arguments with
15 regard to Rule 25(c) are just more generally consistent with
16 how the bankruptcy rules treat proofs of claim. And for
17 example, under Rule 3006, which relates to withdrawal of
18 claims. That rule provides that:

19 "If after a creditor has filed a proof of claim an
20 objection is filed thereto, or a complaint is filed against
21 that creditor in an adversary proceeding, or the creditor
22 has accepted or rejected the plan or otherwise has
23 participated significantly in the case, the creditor may not
24 withdraw the claim, except on order of the Court after a
25 hearing on notice to the trustee or debtor in possession and

1 any creditors' committee." And then it continues.

2 The idea being that once Aurelius filed it's proof
3 of claim, if it wanted to withdraw that proof of claim after
4 the GUC Trust objection was filed because it sold its notes,
5 it would had to have done so on motion. And again, the
6 reason behind that rule, similar to Rule 25(c), is to put
7 the onus for identifying the correct party in a situation
8 where there's been a transfer while a litigation is pending
9 to put the onus for identifying the correct party on the
10 transferor and not, in this case, on -- on the GUC Trust,
11 Your Honor.

12 And when -- when we talk about the equities we
13 don't mean equities flying in thin air. We mean simply that
14 because Aurelius could have itself taken steps to identify
15 who its -- who the beneficial holder of its notes are -- is,
16 could have brought a motion under Rule 25(c), could have
17 sought to remove its proof of claim under Rule 3006, because
18 it didn't take any of those measures and the law puts the
19 burden on them, the equities favor a -- a strict enforcement
20 of the principles behind Rule 25(c).

21 As Your Honor correctly pointed out, we're not
22 abandoning any arguments we've previously made. I said -- I
23 did say at the outset we do think the arguments under 5.1
24 and 5.10 of the plan are irrelevant, but we're not
25 abandoning the in rem arguments that we made.

1 It certainly is possible that if the Court were to
2 let Aurelius out of the case that we still could, in the
3 current configuration of the case, subordinate that claim,
4 but we think that the correct answer under the law and
5 applying the equities is to keep Aurelius in the case, Your
6 Honor.

7 THE COURT: All right.

8 Mr. Friedman, your reply?

9 MR. FRIEDMAN: Let me start, Your Honor, with Rule
10 25, which is fundamentally misinterpreted and misconstrued
11 by Mr. Fisher.

12 Rule 25, as all of the cases and commentaries say,
13 is a rule of procedure. It is utilized by the Federal
14 Courts for considerations that are pragmatic and convenient.

15 To begin with, when there is a transfer of an
16 interest during the action Rule 25 permits the action to
17 continue in the names of the original parties. That is a
18 rule of convenience.

19 There has never been a case in the Federal Courts,
20 as far as our research reveals, where a defendant seeking to
21 be dismissed on the merits, as we are here, has been held to
22 be required to continue as a defendant because of Rule 25.

23 In this case, and it bears repeating, Aurelius
24 sold its Nova Scotia notes long before the adversary
25 proceeding began, approximately a year before. Rule 25(c)

1 has no applicability.

2 The issue is whether at the time this adversary
3 proceeding began Aurelius Investment was or was not a proper
4 defendant. There's nothing in Rule 25(c) that would
5 countenance the conclusion that the GUC Trust now urges,
6 which is, because Aurelius once held the notes and once
7 filed a proof of claim, it is stuck as a defendant in this
8 adversary proceeding.

9 Nothing in Rule 25(c) remotely suggests that a
10 defendant seeking dismissal under the circumstances here has
11 the burden of finding a transferee and serving up a new
12 defendant. On the contrary, the practice in the bankruptcy
13 courts, as far as I know, is very clear. I've seen it over
14 and over again in cases. The plaintiff identifies the
15 proper defendants and then sues them.

16 Here we had the GUC Trust aware about a year
17 before this adversary proceeding started. In fact, Aurelius
18 Investment has provided the information that it has
19 concerning to whom it was sold. It was sold to a broker.
20 The name of the broker was provided. I don't know what the
21 GUC Trust has done. I don't know whether there was a
22 subpoena served on the broker. I don't know whether there
23 are any discovery efforts.

24 What I hear Mr. Fisher saying now is it would take
25 a year or years to identify the transferees. I don't know.

1 It is not the responsibility of Aurelius Investment to do
2 more than it has done.

3 What Mr. Fisher has done, which is part of what
4 plaintiffs do in these situations, is you take steps to
5 provide notice. If in fact Mr. Fisher is correct, and I
6 don't mean to suggest that he is, but if in fact he is
7 correct and he could not through reasonable diligence
8 identify transferees then in those circumstances you do what
9 he is doing. You put people on notice. You put the market
10 on notice. But there's no authority that says one of the
11 things you do is sue the wrong person.

12 Mr. Fisher began by saying we're suing Aurelius
13 because Aurelius is the record holder, and then he says well
14 I acknowledge that 5.1 and 5.10 are irrelevant for purposes
15 of the issues before the Court.

16 But the -- the only justification for even
17 claiming, albeit incorrectly, that Aurelius as record holder
18 is a proper defendant is Section 5.1 of the plan, which (a),
19 doesn't apply, is irrelevant as Mr. Fisher acknowledges.
20 And (b), when you read Section 5.1 of the plan and Section
21 5.10 of the plan, what follows from the text of those
22 provisions is contrary to what Mr. Fisher is saying.

23 What follows from the text is you don't have a
24 claim against the party that filed a proof of claim back in
25 2010. That argument would be potentially available to the

1 GUC Trust if we were talking about a claim other than a
2 claim based on publicly traded notes. That's what 5.1 says.

3 5.1 says, if a party asserts a claim in this case,
4 once we get to the distribution record date, if that party
5 is the record holder that's the party with whom the GUC
6 Trust has to deal, but 5.1 says this provision does not
7 apply to claims based on publicly traded securities.

8 5.10 applies to claims based on publicly traded
9 securities, including explicitly the Nova Scotia note
10 guarantee claims. And what 5.10 makes clear, as you would
11 expect as the law provides in other context, when it comes
12 to publicly traded securities and claims based on them in a
13 bankruptcy case, what matters is not who owned the security
14 when the proof of claim was filed or who owned the security
15 on the distribution record date. What matters is, when the
16 time comes for distribution what do the rules in the
17 securities marketplace tell us about whether the holder as
18 of the record date in the securities marketplace receives
19 the distribution, or whether it was sold with the rights
20 attached?

21 But the concept that Mr. Fisher is arguing for
22 that you look at when the proof of claim was filed and who
23 filed it and that's the record holder in the bankruptcy case
24 for purposes of subordinating the claim or otherwise dealing
25 with the claim, that has absolutely no support in the law or

1 in the plan provisions in this case as you would expect.

2 I -- I also want to mention that Mr. Fisher cites
3 to Your Honor a decision out of the Northern District of
4 Texas Bankruptcy Court, which he claims supports his notion
5 that we can treat the claims objection and the adversary
6 proceeding like one proceeding for purposes of Rule 25(c).

7 I -- I first -- I want to note the case is not
8 cited in their brief. Mr. Fisher said he found it last
9 night. He told me about it this morning. He handed it to
10 me this morning. The case does not support the position of
11 the GUC Trust here.

12 The case reiterates the basic principle that an
13 adversary proceeding and a claims objection are separate
14 proceedings. They unquestionably are.

15 This adversary proceeding began on approximately
16 February something of 2012. There was no adversary
17 proceeding before that. Aurelius Investment was not a
18 defendant in any adversary proceeding before that.

19 What the Texas bankruptcy case says is in a
20 situation where the defendant in the adversary proceeding is
21 also the party who filed the proof of claim that led to the
22 adversary proceeding we are going to hold what that
23 defendant said in his proof of claim as admissible against
24 him as a judicial admission in the adversary proceeding.

25 But again, the Court makes the point and cites

1 Seventh Circuit and other authority that adversary
2 proceedings are separate proceedings. Contested matters are
3 separate proceedings.

4 The notion that that case supports the view that
5 someone who filed a proof of claim at some point in the case
6 and then a response to a claims objection that should be
7 viewed as one proceeding for purposes of Rule 25(c)?

8 There's absolutely no support for that, and all
9 the commentary about Rule 25(c) makes clear that it is
10 simply being twisted and distorted by the argument suggested
11 by GUC Trust.

12 All the cases and commentators make the point that
13 Rule 25(c) is procedural. It does not override substance.
14 It does not impose burdens on parties to identify
15 transferees or anything remotely like that.

16 In fact, when you look at the kinds of cases
17 mentioned by Mr. Fisher involving a corporation and a
18 successor by merger or otherwise, Rule 25(c) cases make the
19 point that if -- if as a matter of substantive law the new
20 corporation is liable, then the procedure is permissible.
21 Under Rule 25(c) you can either name the new corporation or
22 not.

23 But Rule 25(c) does not substitute for the
24 substantive law, does not change the substantive law and
25 never, ever provides a basis for asserting a claim as here

1 against the defendant as to which no relief is possible and
2 that's because of the nature of the claims asserted. These
3 are claims for subordination or reduction of a claim and
4 Aurelius has no interest in that claim.

5 I think -- I think that's everything I have, Your
6 Honor. They've just sued the wrong defendant.

7 We respectfully submit that the motion to dismiss
8 should be granted.

9 Unless, Your Honor, has any questions, I'll sit
10 down.

11 THE COURT: No, I don't. I'll take a recess and
12 then we'll want everybody back here at 12:10. I can't
13 guarantee you that I'll be ready to rule then, but that's
14 when I need you back in the courtroom. We're in recess.

15 MR. FISHER: Your Honor, I'm -- I'm -- may I have
16 a brief opportunity to reply to some of the points that
17 Mr. Friedman made?

18 THE COURT: All right. But limited of course to
19 new stuff he said this second time around.

20 MR. FISHER: Be very brief.

21 With regard to the Basin Resources case out of
22 Texas, Your Honor, the Court there said in general filings
23 on the master docket of a bankruptcy case are not filings in
24 a specific adversary proceeding. But quite on point where
25 you have a proof a claim and then an equitable subordination

1 complaint those are a single proceeding. So we think for
2 that reason it's quite on point.

3 We're not just saying that Aurelius is the right
4 party because they were the holder as of the record date.
5 That's one of many facts. They filed the proof of claim.
6 They continued to hold the proof of claim. They held the
7 proof of claim as of confirmation. They held the proof of
8 claim as of when we filed our objections. They've never
9 taken any step whatsoever to indicate publicly that they're
10 not the holder of the proof of claim until it became an
11 issue in this litigation. The claims register reflects them
12 as the holder of the proof of claim.

13 One last case I wanted to bring to, Your Honor's
14 attention, which responds directly to a point that -- that
15 Mr. Friedman was making about the lack of authority is Brown
16 v. Meyerburg. It's a Southern District case 314 F. Supp.
17 939.

18 In that case it was a case about invalidating a
19 patent, and the case went to judgment, but the patent holder
20 said, I've assigned all my rights in this patent to another
21 party. And the Court said, even so, we -- we have --
22 because of 25(c), because there hasn't been a motion to
23 substitute that other party, we can get a judgment against
24 the original patent holder and it binds the assignee.

25 It's very similar to the situation here. Because

1 it's not just that we're looking to reduce distributions and
2 Aurelius can get off the hook by saying, well, we don't
3 stand to get any distributions anyway, it's that we're
4 looking to equitably subordinate their claim, similar to
5 invalidating a patent.

6 THE COURT: Well, a patent has in rem
7 characteristics, if you're talking about the validity of the
8 patent or its infringement. Wouldn't that again be
9 something you would simply remind me if the new holder of
10 the claim surfaces and then says nothing that happened
11 beforehand affects me?

12 MR. FISHER: I certainly would remind you of that,
13 Your Honor, but in the Meyerburg case there was a party who
14 was the original holder of the patent that was named as a
15 party, and it's no different from what we've done here,
16 which is name the holder of the proof of claim, or the
17 original holder of the proof of claim as the -- the proper
18 party.

19 And the last point I wanted to make is simply that
20 there is an aspect in which this case is unique, which is
21 that as, Your Honor, knows there's no indenture trustee. If
22 there were an indentured trustee for these Nova Scotia notes
23 we wouldn't have these issues because there would be a
24 stable defendant who we could sue and get all the relief we
25 needed. We would just sue the indentured trustee.

1 The problem arises here because these notes can
2 change hands overseas without any readily ascertainable way
3 to find out who the beneficial holder is and there isn't any
4 stable single address to get the relief that we're seeking.

5 THE COURT: I'm not sure if naming the indentured
6 trustee would skin the cat under circumstances like those
7 that are alleged here.

8 In -- in my career I'm not sure if I've ever seen
9 an indentured trustee do anything wrong in a bankruptcy
10 case, other than perhaps sleeping through it.

11 When -- when people who hold bonds misbehave they
12 do it as individuals and the indentured trustee goes to bat
13 for the entirety of the creditor community, which at least
14 in most cases is for the most part wholly innocent and has
15 just been left holding the bag or chose to buy bonds to take
16 the place of people who were holding the bag.

17 It would seem to me that in a case like this one
18 where you're alleging that -- well -- well, some of your
19 things are applicable to the whole class, but some of them
20 are focused at particular people who did particular things
21 that you think was inequitable.

22 MR. FISHER: I -- I understand the point, Your
23 Honor, and so I'd say that, for example, with regards to the
24 re-characterization claim in the complaint that applies to
25 everyone equally.

1 With regard to equitable subordination, I
2 understand of course that that's particular to a particular
3 claimants hold -- conduct.

4 THE COURT: All right. Anything else?

5 MR. FRIEDMAN: Yes, Your Honor, there -- there
6 have been a couple of new things that just came up with
7 Mr. Fisher, including reference to another case that he's
8 just pulled out of his briefcase this morning that was not
9 in papers.

10 THE COURT: You can respond if you want.

11 MR. FRIEDMAN: Yes. Very --

12 THE COURT: I agree with the concept that you
13 don't bring up new cases in surreply.

14 MR. FRIEDMAN: Okay. Well, just very briefly with
15 respect to that case, Your Honor, has absolutely nothing to
16 do with the situation before the Court.

17 That case involved a patent holder who made an
18 assignment of the patent after the litigation was filed.
19 The assignment was made to an assignee who had notice of the
20 pending -- notice of the pending litigation. There was no
21 issue in that case.

22 This was not a case of a motion to dismiss. The
23 Court simply said under Rule 25(c) we had a transfer during
24 the pendency of the case. The action continues against the
25 original party. And to the extent there are issues with

1 respect to the assignee, those are issues are dealt with
2 because the assignee took the patent knowing the litigation
3 was pending.

4 The other point I want to mention is that
5 Mr. Fisher raises the specter of oh, these notes can trade
6 and we'll never know who the defendants are. Mr. Fisher's
7 point about Rule 25 provides him with the very argument that
8 addresses the worry he's expressed, which is, once the
9 adversary proceeding is commenced if people are trading,
10 transferring their interests he then has a basis to argue as
11 he's arguing here, it was a transfer after the action began
12 under Rule 25(c) we can continue the case against the
13 original named defendant.

14 I'm not -- that's not my issue. My issue is
15 there's nothing in Rule 25(c) that would remotely support
16 suing the wrong defendant and then saying well, there was a
17 transfer before the action -- a year before the action, but
18 he's the one we want to sue.

19 Thank you, Your Honor.

20 THE COURT: All right. Well, now we're going to
21 take a recess and I want you back fives minutes after the
22 original time I told you to be here, at which time I'll
23 also, after I issue my ruling, deal with mediation
24 settlement. That stuff.

25 We're in recess.

1 (Recess at 12:24 p.m.)

2 THE COURT: Have seats please.

3 Ladies and gentleman, though I can't agree with
4 many of Aurelius' contentions on this motion, especially
5 those in its papers by which it seeks to take positions on
6 behalf of other GM Nova Scotia bond holders and especially
7 seemingly its transferee, I agree that the problem I
8 identify before at the time of Aurelius' 12(b)(6) motion
9 that it was relying on material that could not be considered
10 on a 12(b)(6) motion when Aurelius stated that it had sold
11 its notes and could rely on those facts only on summary
12 judgment has now been addressed.

13 I'm now allowed to consider material beyond the
14 pleadings, including Aurelius showing as a fact that it sold
15 its notes and it's showing as a mixed question of fact and
16 law that it no longer has a claim in the case.

17 So I'm dismissing the claims against Aurelius now
18 subject to the GUC Trust right as Aurelius acknowledges. To
19 reinstate its claims, if Aurelius acquires GM Nova Scotia
20 finance notes in the future, or even though Aurelius was
21 silent on this, if in the claims objection proceeding, which
22 is running parallel with this adversary proceeding, Aurelius
23 transferee takes the position that Aurelius' dismissal from
24 this adversary proceeding deprives this Court of the ability
25 to grant full relief.

1 I'm not persuaded that when it named Aurelius as a
2 defendant here the GUC Trust brought this adversary
3 proceeding against the wrong party. Wholly apart from
4 Aurelius having participated in the conduct, which is
5 alleged to give rise to equitable subordination or
6 disallowance, Aurelius failed for months to disclose basic
7 information relating to the sale of its GM Nova Scotia
8 finance notes and did so only on June 18, the day after I
9 ruled on its 12(b)(6) motion, two months after Aurelius had
10 filed its motion to dismiss, but Aurelius finally has done
11 so.

12 Assuming, without today deciding, that a claim
13 subject to equitable or subordination -- equitable
14 subordination or disallowance can't be laundered by handing
15 the claim off to someone else it doesn't now appear
16 necessary to have Aurelius in this adversary proceeding to
17 grant appropriate relief with respect to whomever was the
18 recipient of the lateral pass.

19 That can be addressed in the claims allowance
20 process, which is running in parallel with this adversary
21 proceeding and in which Aurelius is still subject to the
22 jurisdiction of this Court by reason of its filing of its
23 proof of claim on November 30, 2009, which Aurelius hasn't
24 withdrawn and which I may or may not permit Aurelius to
25 withdraw, if and when I'm asked, consistent with Rule 3006,

1 which among other things allows me to pass on the dismissal
2 of a claim or to attach terms and conditions as the Court
3 deems proper.

4 At least at this point in time, it is true, as
5 Aurelius argues, that Aurelius now has no claims to
6 subordinate, reduce, or disallow, and that's enough to
7 warrant summary judgment allowing it out of the adversary
8 proceeding today.

9 The GUC Trust isn't arguing today that provisions
10 of the plan, Sections 5.1 and 5.10, would be relevant to
11 determining proper parties in this adversary proceeding as
12 compared and contrasted to dealing with the mechanics of
13 distributions on claims. So I don't need to say any more on
14 that issue and I'm not expressing any further views on that
15 today beyond those that I already expressed.

16 I do have to decide the Federal Rule of Civil
17 Procedure 25 issue. And on this I agree with Aurelius that
18 Rule 25 doesn't have to be complied with here.

19 I'm not sure that Civil Rule 25(c) is as limited
20 in its application as Aurelius says it is, but it's
21 undisputed that Aurelius did not make any transfer or
22 assignment of its interests during the pendency of this
23 adversary proceeding. And I agree with Aurelius that Rule
24 25(c) applies only to transfers that occur after the lawsuit
25 has been commenced.

1 See Six Morris Federal Practice Section 25.31 [3]
2 ("Rule 25(c) allows substitution only in cases involving
3 transfers of interest occurring during the pendency of
4 litigation and not to those occurring before the litigation
5 begins.")

6 I recognize and acknowledge the ambiguity during
7 the word litigation -- in the word litigation. As the GUC
8 Trust properly observes, litigation can be made --
9 understood to mean the adversary proceeding itself, or it
10 can be understood not implausibly to relate to any ongoing
11 litigation between the parties, but at least in a situation
12 where the party sought to be subject to 25(c) compliance
13 doesn't know the assignee, little purpose would be served by
14 imposing 25(c) and subjecting it to accomplishing an
15 impossible task.

16 Also of course 25(c) can't be read to change
17 substantive rights. So the better way to deal with this
18 situation is to deal in any related litigation with avoiding
19 prejudice to a party like the GUC Trust that has sought and
20 tried its best to go by the rules, and where the
21 impossibilities of compliance with the situation have made
22 it ultimately unsuccessful and required it to deal with
23 alternative means.

24 There is much is not all in Judge Abramson's
25 analysis in Basin Resources Corporation 182 B.R. 489, with

1 which I agree, including particular his comments on page
2 493. In fact, based upon my reading of that opinion so far
3 I'm not sure if there's anything in that opinion with which
4 I disagree, at least in terms of Judge Abramson's analysis.
5 But I see how that might be potentially applicable to
6 matters down the road, as compared and contrasted to what we
7 have here.

8 I just can't see it as sufficiently relevant to
9 determining whether compliance should be required under
10 25(c), which of course is a matter with which Judge Abramson
11 had no occasion to address.

12 And while I likewise don't agree that the ability
13 to keep a party in a case as a nominal defendant is that big
14 a deal, or that the authority to do so is as limited as
15 Aurelius suggests, I agree that there is no need to keep
16 Aurelius in as a nominal defendant now, even though I
17 manifestly disagree with Aurelius' contention, mentioned
18 twice in its papers at page 10 of its opening brief and page
19 15 of its reply, that I should be influenced by its
20 contention that it would be burdened by legal fees beyond
21 those it has already incurred.

22 Aurelius chose to invest in this case to the
23 extent of over \$138 million in bonds, and appears on this
24 date of the record, including matters that were put before
25 me incident to discovery disputes, to have had a very major

1 role in the transactions that will be subject to judicial
2 scrutiny in the upcoming several weeks.

3 Aurelius will be a witness no matter what, and
4 it's complaining to me about the cost of being a nominal
5 defendant? I'm choosing not to keep Aurelius in as a
6 nominal defendant because I don't think that it's now
7 necessary, but not because of I -- I have any sympathy for
8 its claim that legal fees incident to its earlier investment
9 decisions and acts should be at all relevant on this motion.

10 And I'm making my dismissal subject to
11 reinstatement if I see any signs of gamesmanship, such as
12 any assignee claim down the road that Aurelius is a
13 necessary party.

14 Nor do I need to address Aurelius' contention as
15 appearing repeatedly in its motion papers that claims for
16 equitable subordination or disallowance cannot travel with
17 the claim or be addressed as part of an in rem proceeding.

18 I'm surprised that Aurelius expects me to endorse
19 such a notion incident to this motion, but for the avoidance
20 of doubt, I'm not endorsing it now, if I ever will.

21 Nor do I endorse Aurelius' contentions argued at
22 length for three pages in its motion, starting at page 15,
23 as to what's necessary to protect others, including its
24 assignee.

25 At the risk of stating the obvious, Aurelius lacks

1 standing to assert the needs and concerns of others, even
2 any entity to whom it might have assigned its claim.

3 So Aurelius' motion for dismissal on summary
4 judgment at this point is granted.

5 The ruling is without prejudice to the rights of
6 all parties with respect to entities that now hold GM Nova
7 Scotia notes or who may later have been identified as doing
8 so.

9 When I say without prejudice to the rights of all
10 parties I mean of course everybody on any side of the issue.

11 As Aurelius offered, and as in any event I would
12 have required, this dismissal is subject to the GUC Trust
13 right to reinstate its claims if Aurelius acquires GM Nova
14 Scotia finance notes in the future.

15 Also, I'll go ballistic if in the future of this
16 adversary proceeding, or in the related claims objection
17 proceeding, which is running in parallel with this adversary
18 proceeding, Aurelius' transferee takes the position that
19 Aurelius' dismissal from this adversary proceeding deprives
20 this Court of the ability to grant full relief.

21 This dismissal is also subject to the Court's
22 rights to reinstate the claims against Aurelius and to hear
23 applications for any further relief if it later turns out
24 that there has any gamesmanship with respect to this
25 dismissal or its consequences.

1 Aurelius is to work with the GUC Trust to try to
2 consensually agree upon the form of order consistent with
3 this ruling. If after diligent efforts to do so, there is
4 an inability to agree, then either side may settle an order
5 consistent with this ruling no less than two business days'
6 notice by hand, fax, or email.

7 All right. Let's turn now to the matter of
8 mediation. Come on up for anybody who wants to be heard on
9 that.

10 MR. SHER: Your Honor, may I make one comment?

11 THE COURT: Yeah, sure, Mr. Sher.

12 MR. SHER: My apologies.

13 Thank you, Barry Sher. Good afternoon on behalf
14 of Appaloosa.

15 I just want to make a -- a comment in light of the
16 Court's ruling.

17 I took the opportunity to speak with Mr. Fisher on
18 the break. As I had mentioned in one of our chamber's
19 conferences, Appaloosa, whom I represent, also sold back in
20 early '11, so similar facts as here.

21 I think in talking to Mr. Fisher, we'll be able to
22 address that issue by way of stipulation or something along
23 those lines. If not in the off chance that we can't I just
24 wanted to put on the record I'm reserving my rights with
25 respect to that issue and that -- and that argument. I

1 don't know if Mr. Fisher wants to say --

2 THE COURT: Mr. Fisher?

3 MR. FISHER: Your Honor, Mr. Sher and I agreed to
4 talk about the potential implications of Your Honor's ruling
5 with regard to Appaloosa and -- and nothing more. I -- I
6 can't commit one way or the other as to what will come from
7 those discussions.

8 THE COURT: All right. Well, you got -- you don't
9 normally need reservations of rights from me, Mr. Sher, but
10 like chicken soup I guess they can't hurt. In any event you
11 got them.

12 MR. SHER: That's my view. Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. FRIEDMAN: Your Honor, we're not staying for
15 the mediation discussion.

16 THE COURT: Okay.

17 MR. FRIEDMAN: Thank you.

18 (Pause)

19 THE COURT: Mr. Reisman?

20 MR. REISMAN: Good afternoon, Your Honor. Steven
21 Reisman on behalf of the Paulson Noteholders. I neglected
22 to give a card to the court reporter and I don't want to put
23 him out. So if I could approach for one moment.

24 THE COURT: Sure, you bet.

25 MR. REISMAN: Thanks. Thank you, Your Honor.

1 I -- I rise in regards to Your Honor's request for
2 an update with respect to mediation, which I had suggested
3 at the last hearing before Your Honor in this matter.

4 I promptly sent out an email to all of the
5 necessary parties -- all of the parties in the matter and
6 inquired of their interest in mediation. Some responded
7 very quickly, others took a little bit of follow up, but I'm
8 happy to report that I've heard back from everybody.

9 And I can say that with -- well, let me first
10 address Aurelius. Aurelius said no. I think we can dispose
11 of them. They've left and they have no -- no interest in
12 participating in -- in the mediation.

13 Appaloosa said, okay, but a similar reservation.
14 They're in the same boat as Aurelius.

15 With respect to the Greenberg Traurig noteholders,
16 with respect to New GM, with respect to Nova Scotia Finance,
17 and with respect to the Brown Rudnick noteholders, everyone
18 said okay, happy to do it. Let's set up a time, neutral
19 third party. Let's get it going.

20 I heard back yesterday from Mr. Fisher with a
21 response, okay, if the schedule and procedure can be worked
22 out, and he didn't think that it would be capable of being
23 worked out before the trial, and he didn't think that it
24 would be capable of happening during the GAP week, and he
25 didn't think that it would capable of also occurring in the

1 following week where, Your Honor, has two days, I think,
2 that are available, but there are three days that are not
3 available.

4 So I read it carefully and -- and he's here and he
5 respond to you, but I read it as, sort of I don't want to
6 tell the Judge no, but there's no good time that's really
7 available to mediate here.

8 And my view of this matter, and I've read the
9 papers of the -- of the parties is -- and I've heard
10 Mr. Fisher argue in Court, is the -- the level of
11 preparation that's necessary for mediation is really just
12 handing materials to a neutral third-party mediator.

13 I think that I could do this and I think clearly
14 the other lawyers that are could this in their -- in their
15 sleep, though they will be conscious during the mediation
16 session.

17 So I'd like to try and find the time. I'm -- I
18 understand he's going to be on vacation the -- the interim
19 week and people, including myself, have planned a vacation
20 that week, given that Your Honor is going to be out and
21 there are the other pressures of life that -- that go along
22 besides the practice of -- besides the practice of law.

23 So I'd like to try and find a time that works for
24 everybody, and I'd like to hear from Mr. Fisher as to sort
25 of what he's suggesting, because everyone else -- everyone

1 else is on board with proceeding with a neutral third-party
2 mediator.

3 I know we will have an issue. There was a joke
4 that was made to me when I said, they said, well, who do you
5 thinking of for a mediator? And I said, well, I can think
6 of three people off the top of my head. And the response
7 was, tell me your fourth choice. Meaning, I'm going to
8 reject your three first out of hand.

9 I think there'll be a little bit of, you know,
10 jockeying in that regard, but at the end of the day, I -- I
11 want to pick someone who is honest, fair, but hopefully can
12 bring the sides -- bring the sides together and has no -- we
13 -- we've all agreed not a sitting bankruptcy judge. Someone
14 who is knowledgeable in -- in this particular area.

15 So with that, if -- if we could hear from
16 Mr. Fisher, and I'm happy to answer any questions, Your
17 Honor, may have.

18 THE COURT: Okay. Mr. Fisher?

19 MR. FISHER: Your Honor, I'm not sure how I ended
20 up in this position of being singled out and cornered by
21 Mr. Reisman and portrayed as a hold out.

22 Mr. Reisman's client has come late to this case.
23 My understanding is that Paulson has 170 million pound
24 sterling of notes. That's a lot of notes. Everyone has
25 responded favorably to Mr. Reisman's suggestion that we try

1 to settle.

2 All I said on behalf of the GUC Trust was that we
3 were open to a mediation subject to agreeing on the
4 mediator, the schedule, and the process. I indicated that I
5 was going to be away on vacation during that GAP week. And
6 I said that I was skeptical that during the week when we're
7 also carrying on the trial, on the 21st and the 22nd, that
8 that would be a -- a time when a meaningful mediation could
9 really be accomplished.

10 I think I ended my email by saying, but I remain
11 open to whatever ideas the group comes up with. It's as
12 simple as that and I resent the effort to characterize my
13 email in any other way.

14 THE COURT: I -- I didn't regard it as -- as an
15 effort to make you the boogey man, but I -- I did regard it
16 as Mr. Reisman's effort to say that to his astonishment he
17 had found everybody agreeable in principle and that he was
18 then faced with the practical difficulty of turning it into
19 something that might happen.

20 I didn't regard it as personally as -- as you
21 might have, Mr. Fisher, but of course, I'm not the guy who
22 was on the receiving end of the comment. So -- and I
23 certainly know how I feel every time a higher court says
24 anything about my judicial performance, much less uses the R
25 word.

1 So let's just figure out a way to solve this
2 problem. Because I think it's fair to say without
3 prejudging anything else that at the end of this trial I'm
4 not going to be ruling off the bench on it, and I also
5 recognize that you guys got a lot of work to do.

6 If I thought that the mediation could enable you
7 guys to settle the matter before the trial is even completed
8 that would be very tempting to me, but I -- I don't know
9 whether that is a realistic expectation, and for sure I -- I
10 don't want to make anybody cancel their vacation, especially
11 if I know I'm going to have to take the matter under
12 submission.

13 So I think what I would like to do is this,
14 because I -- I think that this matter is sufficiently
15 complicated, especially with the presence of the swaps,
16 which are not a immaterial aspect of it.

17 You've got some capable colleagues, Mr. Fisher. I
18 -- I think I would like you guys to get the process
19 underway, to pick a mediator, and to get paperwork to the
20 mediator, even if that doesn't include your position
21 statement, which I recognize would be more work and probably
22 more work than Mr. Reisman gave it credit for being.

23 Any mediator, if he or she is going to do the job
24 right, is going to have to do some reading and head
25 scratching before any meetings. I'd like to get that

1 underway.

2 I don't want any party in this case to be impaired
3 in his or trial prep, and I don't want anybody to lose a
4 vacation, if for no other reason than my belief, having once
5 been a litigator, that in the week before trial you work
6 very hard and you're very tired, and if you're not tired
7 before the trial has even started you're tired after a few
8 days of trial. And you're probably going to want --
9 everybody is probably going to want that vacation in that
10 middle week, and I'm not going to interfere with that.

11 But I would like you to see if you can get -- if
12 there is a time at which you all can set, and if you can't
13 do it during the GAP week -- and then of course you're going
14 to be back on trial with me, then you try to do it as soon
15 thereafter as possible.

16 I -- I'm telling you now that there isn't going to
17 be a ruling off the bench in this matter. And also, without
18 telling you guys how to practice law, that I assume that if
19 I act -- if I rule adversely to one side or the other
20 there's more than an even likelihood that somebody is going
21 to want to take it up the street, and that's my thinking.

22 I don't know if I'm on the record now or off, but
23 I have no problems with either way.

24 MR. REISMAN: Your Honor, if I could just --

25 THE COURT: Mr. Reisman?

1 MR. REISMAN: -- just for one moment, Steve
2 Reisman.

3 With respect to my comments, I -- I was not trying
4 to antagonize or put Mr. Fisher in a bad spot. Everyone
5 else just came back and said yes we'll mediate and there
6 were a bunch of things in -- in his email.

7 I -- I hear him now. When -- when I -- when I --
8 when I make -- when I attack somebody I'm pretty clear in --
9 in how I -- in how I do it.

10 THE COURT: You're saying you knew attack and this
11 ain't an attack?

12 MR. REISMAN: This is not. This is not -- this is
13 not -- this is not meant in that way in any -- and to that I
14 say it on the record, I apologize to Mr. Fisher if in any
15 way I know he perceived it that way and that was not how I
16 intended it and therefore, I apologize, because perception
17 becomes reality.

18 But with respect to -- and I also don't mean to
19 belittle the work that there is going to be required in
20 connection with the mediation in preparing the mediation
21 statements, et cetera -- I'm just saying we're all very
22 familiar with the issues and -- and there are briefs that
23 are going on, et cetera.

24 And so what -- what I would propose to do, Your
25 Honor, is I really do think that that following week may be

1 an opportune time to mediate for a day and see where we can
2 get in that regard.

3 THE COURT: By following week -- I -- I should of
4 brought my calendar out, I didn't. Which -- which week are
5 you talking about? The week in between --

6 MR. REISMAN: The 20th. I think it's the week of
7 the -- is that correct? The week of the 20th.

8 THE COURT: Talk about it in qualitative terms,
9 Mr. Reisman. You're talking about the GAP week or the week
10 right after --

11 MR. REISMAN: We have trial two days.

12 THE COURT: -- the trial the second week?

13 MR. REISMAN: The week right after. So there's
14 the -- there's the trial begins on the 7th, then the
15 following week is off, and then the following week I believe
16 Your Honor is only available two days that week. If I am
17 correct.

18 THE COURT: Well, it may be a little more than
19 that if you want just afternoons, but I -- I'm familiar with
20 the week you're talking about now, yes.

21 MR. REISMAN: So I was suggesting maybe having it
22 that week.

23 But what I'd like to propose is and I don't want
24 to take up, Your Honor's time, with this, let us caucus, let
25 us see if there is an available date, let us see if

1 Mr. Fisher could do this or someone else that -- that's
2 working on -- on it.

3 I know that a number of the people that are trying
4 the case have said that they're not going to be involved in
5 the mediation because they're going to be focused on the --
6 on the trial, but there are other people in their firms that
7 will be involved.

8 THE COURT: Right. And you don't need me to tell
9 you, Mr. Reisman, nobody in this room needs me to tell you,
10 that not all chess pieces are fungible, and some people can
11 try the case, but are also needed to be there at the
12 mediation and others may not. So you're going to have to
13 put the pieces to the puzzle together as best you can.

14 MR. REISMAN: Understood. Yeah, I'm trying to --
15 to in fact to do that and to be constructive in that regard
16 and I, you know, I don't if I will be successful, but I
17 think it's clearly worth the effort.

18 THE COURT: Okay.

19 MR. REISMAN: And we'll coordinate with Mr. Fisher
20 and we'll report back to Your Honor subsequently as to the
21 selection of a mediator and getting materials over.

22 THE COURT: Okay. Anybody else want to weigh in
23 on that, on any of this? Mr. Steinberg?

24 MR. STEINBERG: Your Honor, I don't think I have
25 any need to weigh in on the mediation, but I wanted to just

1 make sure that we weren't leaving, because I did have a
2 question about on the trial week whether we have firmly
3 decided that we are not having anything on August 10th? I
4 just wanted to -- I think it was -- I think Your Honor had -
5 - had indicated an inclination that you probably were not
6 going to give us that day, but I don't think any of the
7 professionals are sure whether that date is -- is on the
8 calendar?

9 THE COURT: What day of the week is that?

10 MR. STEINBERG: That's the Friday I think you said
11 you had a personal situation.

12 THE COURT: Oh, well, I think it's unlikely, but
13 I've had other things on my plate for the last 48 hours, and
14 for the next 24 I'll just have to figure out what the facts
15 are and get back to you soon as I can.

16 MR. STEINBERG: Sure, I think we're all still up
17 -- just to be candor with, Your Honor, we have three trial
18 dates, three days on the week on August 7th, and we have two
19 half days in the week of August 20th.

20 And -- and I think Mr. Fisher hasn't committed yet
21 to his schedule of witnesses. He's going first. We're all
22 trying to figure out how to get people available so that it
23 all fits in properly, so we're just trying to figure out
24 what the slotted days might be. But if we can't resolve it
25 today we'll all try to it on our own.

1 THE COURT: I'm telling you we can't resolve it
2 today.

3 All right. Anything else? Mr. Fisher?

4 MR. FISHER: A very small informational question.

5 Your Honor's case management order in the joint
6 pretrial order to be submitted asks for contentions of fact
7 on law to be submitted as part of the joint pretrial order,
8 and we've been having some discussion among ourselves as to
9 exactly what Your Honor has in mind with regard to that and
10 what Your Honor would find most helpful.

11 THE COURT: Refresh my recollection on what you
12 guys decided about what kind of briefing there would be and
13 when? I'm not sure if you're going to be doing pretrial
14 briefs, whether I need separate contentions in a pretrial
15 order. My standard pretrial order has historically been
16 used, not exclusively of course, but in the matters that are
17 different than this.

18 And so what else have you guys agreed upon in
19 which you're going to be telling me your contentions?

20 MR. FISHER: We -- we've agreed to submit pretrial
21 briefs by this Friday, Your Honor. And so certainly the GUC
22 Trust would be happy to just rely on that in lieu of
23 contentions of fact on law if that's acceptable to the
24 Court.

25 THE COURT: Am I right in assuming that whatever

1 contentions anybody has would be stuck in its pretrial
2 brief?

3 MR. O'DONNELL: Your Honor, may I please the
4 Court, Sean O'Donnell with Akin, Gump on behalf of the
5 trustee.

6 You -- you are correct in that assumption. And I
7 think I can speak for everyone on the defense side that our
8 preference as well would be to just use the pretrial briefs.

9 THE COURT: Okay. Well, then my -- anybody else
10 who wants to weigh in who hasn't?

11 All right. Contentions in the pretrial order are
12 waived. Just tell me whatever you want to tell me your
13 pretrial briefs.

14 MR. STEINBERG: Your Honor, Arthur Steinberg
15 again.

16 I just wanted to make sure. I understand the
17 waiver of the contentions of law, but my understanding was
18 that the pretrial order was still going to have an
19 opportunity to set forth the undisputed facts to try to
20 streamline the trial.

21 THE COURT: I didn't understand that was what
22 anybody was talking about.

23 MR. STEINBERG: Okay. I just wanted to make sure.
24 That's fine.

25 THE COURT: Okay. Anything else?

1 Okay. Folks, have a good a day. We're adjourned.

2 (Whereupon these proceedings were concluded at 12:57

3 PM)

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C E R T I F I C A T I O N

I, Dawn South and Jacquelyn Goldsmith, certify that the foregoing transcript is a true and accurate record of the proceedings.

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